TEXAS REGISTER

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Zoe Delafosse
9th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
register@sos.state.tx.us

Secretary of State –
Roger Williams

Director - Dan Procter

Staff
Ada Aulet
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IN THIS ISSUE

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for April 27, 2007

Appointed to be a member of the Texas State Affordable Housing Corporation, Board of Directors for a term to expire February 1, 2013, Jo Van Hovel of Temple. Ms. Hovel is being reappointed.

Appointed to be a member of the Texas State Affordable Housing Corporation, Board of Directors for a term to expire February 1, 2013, Thomas A. Leeper of Huntsville. Mr. Leeper is being reappointed.

Appointed to be a member of the Texas Optometry Board for a term to expire January 31, 2013, Melvin G. Cleveland, Jr., O.D. of Arlington (replacing Fred Farias of McAllen whose term expired).

Appointed to be a member of the Texas Optometry Board for a term to expire January 31, 2013, Virginia Sosa, O.D. of Uvalde (replacing Sharon Johnson of Arlington whose term expired).

Appointed to be the Pecos River Compact Commissioner for a term to expire January 23, 2011, Julian W. Thrasher, Jr. of Monahans. Mr. Thrasher is being reappointed.

Appointed to the State Community Development Review Committee for a term to expire February 1, 2009, Judge Jose A. Aranda, Jr. of Eagle Pass. Judge Aranda is replacing Judge Wayne McWhorter of Marshall whose term expired.

Appointed to the Texas Emerging Technology Committee for a term to expire August 19, 2007, Gerald D. Cagle of Fort Worth (replacing Clyde Higgs of Fort Worth who resigned).

Appointed to the Texas Emerging Technology Committee for a term to expire August 19, 2007, Madison F. Pedigo of Lucas (replacing Johannes Stork of Allen who resigned).

Appointed to the Interstate Oil and Gas Compact Commission for a term at the pleasure of the Governor, Scott Wheeler Tinker of Austin.

Appointments for May 4, 2007

Appointed to be a member of the Texas Board of Orthotics and Prosthetics for a term to expire February 1, 2009, Kenneth Mueller of Brenham (pursuant to SB 287, 78th Legislature, Regular Session).

Appointed to be a member of the Texas Board of Orthotics and Prosthetics for a term to expire February 1, 2013, Richard Michael Neider of Lubbock (reappointment).

Appointed to be a member of the Texas Board of Orthotics and Prosthetics for a term to expire February 1, 2013, Erin Elizabeth Berling of Coppell (reappointment).

Appointed to be a member of the Texas Public Finance Authority for a term to expire February 1, 2011, Robert Thomas Roddy, Jr. of San Antonio (replacing Marcellus Taylor of Lewisville who resigned).

Appointed to be a member of the Texas Public Finance Authority for a term to expire February 1, 2013, Ruth Corry Schiermeyer of Lubbock (Ms. Schiermeyer is being reappointed).

Appointed to be a member of the Texas Public Finance Authority for a term to expire February 1, 2013, D. Joseph Meister of Dallas (replacing J. Vaughn Brock of Austin whose term expired).

Appointed to be a member of the Finance Commission of Texas for a term to expire February 1, 2008, Stanley D. Rosenberg of San Antonio (replacing Allan Polunsky of San Antonio who resigned).

Appointed to be a member of the Finance Commission of Texas for a term to expire February 1, 2010, Jonathan Bennett Newton of Houston (replacing Hector Delgado of El Paso who resigned).

Appointed to be a member of the Texas Woman's University Board of Regents for a term to expire February 1, 2013, Cecilia May Moreno, Ed. D. of Laredo (replacing Therese Bevers, MD of Houston whose term expired).

Appointed to be a member of the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2011, Greg James of Nacogdoches (replacing James Raney of Nacogdoches whose term expired).

Appointed to be a member of the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2011, Louis Alan Bronaugh of Lufkin (replacing Carl Ray Polk, Jr. of Lufkin whose term expired).

Appointed to be a member of the Upper Colorado River Authority Board of Directors for a term to expire February 1, 2009, William Ray Hood of Robert Lee. Mr. Hood is replacing Jack Brewer of Robert Lee who is deceased.

Designating Kenneth Mack Perkins, D.C. of Conroe as Presiding Officer of the Texas Board of Chiropractic Examiners for a term at the pleasure of the Governor. Dr. Perkins is replacing Sandra Jensen, D.C. of Coppell as presiding officer.

Designating Margaret K. Bentley of DeSoto as Presiding Officer of the Texas Physician Assistant Board for a term at the pleasure of the Governor. Ms. Bentley is replacing Timothy Webb of Houston as presiding officer.

Appointments for May 11, 2007

Appointed to be a member of the Texas Southern University Board of Regents for a term to expire February 1, 2009, E. Javier Loya of Houston (replacing Belinda Griffin of DeSoto who resigned).

Appointed to be a member of the Texas Southern University Board of Regents for a term to expire February 1, 2011, Gary Bledsoe of Austin (replacing David Diaz of Corpus Christi who resigned).

Appointed to be a member of the Texas Southern University Board of Regents for a term to expire February 1, 2013, Glen Lewis of Fort Worth (replacing George Williams of Houston whose term expired).

Appointed to be a member of the State Board of Trustees of the Texas Emergency Services Personnel Retirement Fund for a term to expire September 1, 2011, Patrick James Hull of Yoakum. Mr. Hull is replacing Robert Weiss of Brenham whose term expired.

Appointments for May 14, 2007

Appointed to be a member of the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2011, Richard Douglas Smith of Clarksville (replacing James Goodman who resigned).

Appointed to be a member of the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2013, Brad Drake of Paris (replacing Mickey McKenzie who resigned).

Appointed to be a member of the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2013, Mike Russell of Powderly (Mr. Russell is being reappointed).

Appointed to be a member of the Texas Military Preparedness Commission for a term to expire February 1, 2011, Howard C. Ham, Jr. of San Antonio (pursuant to HB 3163 & 3302, 79th Legislature, Regular Session).

Appointed to be a member of the Texas Military Preparedness Commission for a term to expire February 1, 2013, William J. Ehrie of Abilene (Reappointment).

Appointed to be a member of the Texas Military Preparedness Commission for a term to expire February 1, 2013, Ronald D. Henson of Texarkana (Reappointment).

Appointed to be a member of the Texas Military Preparedness Commission for a term to expire February 1, 2013, Charles E. Powell of San Angelo (replacing Johnny Fender of San Angelo whose term expired).

Appointed to be a member of the State Board of Trustee of the Texas Emergency Services Personnel Retirement Fund for a term to expire September 1, 2011, Francisco Torres of Raymondville. Mr. Torres is being reappointed.

Appointed to be Presiding Officer of the Central Texas Regional Mobility Authority for a term to expire February 1, 2009, Robert E. Tesch of Cedar Park. Mr. Tesch is being reappointed.

Rick Perry, Governor

TRD-200701899

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Opinions

Opinion No. GA-0546

The Honorable Dennis Bonnen

Chair, Committee on Environmental Regulation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Angleton-Danbury Hospital District of Brazoria County is authorized to house a private imaging business in the district's hospital facility and to manage the private imaging business (RQ-0542-GA)

S U M M A R Y

The Angleton-Danbury Hospital District of Brazoria County, Texas (the "District") has implied authority under Special District Local Laws Code chapter 1002 and other applicable law to manage and operate a private imaging business housed in the District's hospital facility, provided that the operation of the business complies with article IX, section 9 of the Texas Constitution and the business arrangement complies with article III, section 52 of the Texas Constitution.

Opinion No. GA-0547

Dewey E. Helmcamp III, J.D.

Executive Director

Texas Board of Veterinary Medical Examiners

333 Guadalupe, Suite 3-810

Austin, Texas 78701-3942

Re: Validity of a rule adopted by the Texas Board of Veterinary Medical Examiners that prohibits a Board licensee from dispensing any controlled substance unless the licensee is registered with the Texas Department of Public Safety (RQ-0553-GA)

S U M M A R Y

The Texas Board of Veterinary Medical Examiners is authorized to adopt a rule that prohibits a Board licensee from dispensing any controlled substance unless the licensee is registered to do so with the Texas Department of Public Safety.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200701915
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: May 16, 2007

♦ ♦ ♦

Opinion Withdrawal

RQ-0582-GA

Request for Opinion was withdrawn by Requestor.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200701916
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: May 16, 2007

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.33

The Texas Youth Commission (TYC) adopts on an emergency basis an amendment to §93.33, relating to the investigation of allegations or suspicions of abuse, neglect, or exploitation in programs and facilities under TYC jurisdiction.

The amended rule provides that a report of alleged or suspected abuse, neglect, or exploitation, and any other information related to the investigation of such an allegation or suspicion, must generally be released to a member of the public upon request. The amended rule also provides that the report and information must be redacted to protect the identity of a child who is the subject of the report, the person who made the report, and any other person, whose life or safety may be endangered by the disclosure. The amended rule does allow for the release of information that would otherwise be confidential under Texas Family Code §261.201. Under §261.201, information made confidential by that section may be disclosed for purposes consistent with rules adopted by TYC as the investigating agency. However, the amended rule cannot allow for the release of information made confidential by a law other than Texas Family Code §261.201.

This amendment is adopted on an emergency basis to immediately allow for public access to information related to an investigation of alleged or suspected mistreatment of youth.

The amendment is adopted on an emergency basis under the Human Resources Code, §61.034, which provides the Texas Youth Commission authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule affects the Family Code §261.201.

§93.33. Alleged Abuse, Neglect, and Exploitation.

(a) - (k) (No change.)

(l) Standards for Compiling Investigation Information and Confidentiality of Reports.

(1) - (2) (No change.)

(3) A report and other related investigation information shall be released, upon written request, to any member of the public unless the report or information is made confidential by a law other than Texas Family Code §261.201. The report and information must be redacted to protect the identity of:

(A) the child, as defined under Texas Family Code §101.003(a), who is the subject of the report;

(B) the person making the report; and

(C) any other person whose life or safety may be endangered by the disclosure.

[~~(3) The identity of the person making an allegation, and the files, reports, records, tapes, communications, and working papers used or developed in an investigation, or in providing services as a result of the investigation, are confidential and not open for public inspection under the provisions of §261.201 of the Family Code, Chapter 552 of the Government Code, and §61.073 of the Human Resources Code.~~]

(4) - (7) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2007.

TRD-200701796
Steve Foster
General Counsel
Texas Youth Commission
Effective Date: May 9, 2007
Expiration Date: September 5, 2007
For further information, please call: (512) 424-6014

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §20.12, §20.16

The Texas Department of Agriculture (the department) proposes amendments to §20.12 and §20.16, concerning a suppressed area under the department's cotton pest control program. Amendments are proposed to add the St. Lawrence Boll Weevil Eradication Zone (the St. Lawrence Zone) to the list of suppressed areas in §20.12 and exempt transportation of regulated articles through Sterling County from certain quarantine requirements in §20.16.

The boll weevil eradication program in Texas was initiated in 1994 in an effort to rid the state of the boll weevil. Once a zone has achieved suppressed status, the zone can become re-infested with boll weevil from outside areas. Elimination of boll weevil re-infestations can be expensive. In areas of the southeastern United States, the control to stop re-infestations ranged from $20,000 to over one million dollars, with an average cost of $125,000 per outbreak. The designation of a zone as suppressed invokes quarantine restrictions on the movement of regulated articles from a quarantined area into a restricted area; this helps protect the zone from boll weevil re-infestation.

In accordance with §20.12, the Texas Boll Weevil Eradication Foundation (the foundation) recommended that the department declare the St. Lawrence Zone as suppressed. The foundation provided scientific documentation acceptable to the department, which indicates that movement of regulated articles into this zone presents a threat to the success of boll weevil eradication. The data provided indicates that boll weevil numbers for the 2006 cotton crop year were below the requirement of an average of 0.025 boll weevils per trap per week. Consequently, the Commissioner of Agriculture declared the St. Lawrence Zone to be suppressed on May 8, 2007.

Amendments to §20.16 are proposed to exempt regulated articles being transported through Sterling County from restrictions in §20.16. This exemption is not expected to pose a risk to boll weevil eradication because no cotton is grown in Sterling County and when the proposed amendments become effective all surrounding counties will have attained either suppressed or functionally eradicated status. Enactment of this exemption will avoid imposing an unnecessary regulatory burden and expenses on persons transporting regulated articles through Sterling County.

Dr. Robert Crocker, Coordinator for Pest Management and Citrus Programs, has determined that for the first five-year period the proposed amendments are in effect, there will be no anticipated fiscal impact for state and local governments as a result of administering or enforcing the rule, as proposed since all cotton or other regulated items entering the St. Lawrence Zone from quarantined areas, other than Sterling County (which has no cotton), either have originated in or have passed through one or more suppressed or functionally eradicated zones.

Dr. Crocker also has determined that for each year of the first five years the proposed amendments are in effect, the amendments will benefit the public by reinforcing efforts to eradicate boll weevils, thereby protecting the investment that cotton producers and the State of Texas have made to eradicate the pest. Once the boll weevil is reduced to low levels or eradicated from cotton producing areas of the state, fewer insecticide applications should be necessary to produce high quality cotton. In other eradicated areas of the United States, it is estimated that growers are saving an average of $36 per acre in reduced pesticide applications and earning an additional $42 per acre from increased cotton yield. Preventing re-infestation by boll weevils in restricted areas may enable Texas cotton producers to achieve similar results. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the amendments.

Comments on the proposal may be submitted in writing to Dr. Robert Crocker, Coordinator for Pest Management and Citrus Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register.*

The amendments to §20.12 and §20.16 are proposed in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area.

The code that is affected by the proposal is Texas Agriculture Code, Chapter 74, Subchapters A and D.

§20.12. Suppressed Areas.

(a) (No change.)

(b) The Northwest Plains (NWP), Northern High Plains (NHP), Northern Rolling Plains (NRP), Southern High Plains/Caprock (SHP/C), Western High Plains (WHP), Permian Basin (PB), El

Paso/Trans Pecos (EP/TP), [~~and~~ ~~the~~] Panhandle, and St. Lawrence Boll Weevil Eradication Zones, as defined in the Texas Agriculture Code, §74.1021 and Texas Administrative Code §§3.110, 3.111, 3.112, 3.115 and 3.118 have been declared as suppressed by the commissioner.

(c) - (d) (No change.)

§20.16. Restrictions.

(a) - (b) (No change.)

(c) Exceptions. The following are exceptions to the restrictions in subsection (a) of this section:

(1) - (3) (No change.)

(4) Movement of regulated articles through Sterling County is exempted from the requirements of this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 14, 2007.

TRD-200701856
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §233.2

The State Board for Educator Certification (SBEC) proposes an amendment to §233.2, relating to categories of classroom teaching certificates. The section addresses generalist certificates. The proposed amendment would create a new certificate for Generalist: Early Childhood-Grade 6 to be issued no earlier than September 1, 2008. In addition, the proposed amendment would allow a standard certificate holder assigned to teach in a self-contained classroom for Grades 5 and 6 prior to the 2007-2008 school year to remain in the assignment, at the discretion of the employing school district, through the 2009-2010 school year. This assignment extension is necessary to cover the transition period when educator standards and tests are being developed and approved prior to full implementation of the Generalist: Early Childhood-Grade 6 certificate.

19 TAC Chapter 233, Categories of Classroom Teaching Certificates, §233.2, Generalist, provides for the issuance of the Generalist: Early Childhood-Grade 4 and Generalist: Grades 4-8 certificates. Beginning in fall 2002, the SBEC began issuing certificates for Early Childhood-Grade 4, Grades 4-8, and Grades 8-12.

In 2003, due to a shortage of fifth and sixth grade teachers, the SBEC adopted an amendment to 19 TAC §233.2 that allowed school districts to assign the holder of a Generalist: Early Childhood-Grade 4, Bilingual Generalist: Early Childhood-Grade 4, or English as a Second Language Generalist: Early Childhood-Grade 4 certificate to teach in a self-contained classroom for Grades 5 and 6 during the 2003-2004, 2004-2005, and 2005-2006 school years. In May 2006, the SBEC approved an amendment to extend the timeline of the rule through the 2006-2007 school year, including summer school 2007. This provision expires August 1, 2007. At the May 2006 SBEC meeting, staff was asked to review the current certification structure and develop a plan for a permanent solution to alleviate the staffing problem in Grades 5 and 6.

At the direction of the SBEC, an educational stakeholder group met in September 2006, November 2006, and February 2007 to discuss possible solutions and implications of changes to the certification structure. On March 9, 2007, the SBEC reviewed the information generated by the stakeholder meetings regarding the certification structure. Texas Education Agency (TEA) staff provided the SBEC with data regarding the number of certificates that have been issued at different levels under the current Early Childhood-Grade 4, Grades 4-8, and Grades 8-12 structure. Several grade level configurations were presented to the SBEC for consideration regarding revisions to the certification structure in an attempt to address the shortage of teachers in self-contained classrooms for Grades 5 and 6.

At the March 9, 2007, meeting, the SBEC directed staff to meet again with stakeholders. The stakeholders met on March 30, 2007, reaching consensus that creating a Generalist: Early Childhood-Grade 6 certificate would provide school districts the most flexibility in assignment.

The proposed amendment to 19 TAC §233.2 would create a new subsection (c) to add a new Generalist: Early Childhood-Grade 6 certificate to be issued no earlier than September 1, 2008. In order to allow time for educator standards to be developed and approved, including proficiencies for teaching Grades 5 and 6; examinations to be developed; and educator preparation programs to adjust curriculum for the new certificate, proposed new subsection (d), formerly subsection (c), would add a provision that would allow persons who hold standard Generalist: Early Childhood-Grade 4 certificates assigned to self-contained classrooms in Grades 5 and 6 prior to the 2007-2008 school year to remain in these assignments through the 2009-2010 school year, including summer school programs. The extension of assignments would be at the discretion of the employing school districts. The proposed amendment would exclude programs beginning in fall 2010 as proposed in §233.2(d)(4).

Raymond Glynn, acting associate commissioner for educator quality and standards, has determined that, for each year of the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Glynn has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment will be issuance of appropriate certificates to educators who demonstrate content mastery toward meeting the certification requirements. Also, school districts, in the interim, would be allowed to extend the 2006-2007 school year assignments of educators placed in hard-to-fill vacancies in self-contained classrooms for Grades 5 and 6 until the transition to the new certificate is complete. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Dr. Raymond Glynn, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under TEC, §21.031(b), which requires the SBEC to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state and §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued.

The proposed amendment implements TEC, §21.031(b) and §21.041(b)(2).

§233.2. Generalist.

(a) Generalist: Early Childhood-Grade 4. The Generalist: Early Childhood-Grade 4 certificate may be issued no earlier than September 1, 2002. The holder of the Generalist: Early Childhood-Grade 4 certificate may teach the following content areas in a prekindergarten program, in kindergarten, and in Grades 1-4:

(1) Art;

(2) Health;

(3) Music;

(4) Physical Education;

(5) English Language Arts and Reading;

(6) Mathematics;

(7) Science; and

(8) Social Studies.

(b) Generalist: Grades 4-8. The Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Generalist: Grades 4-8 certificate may teach the following content areas in Grades 4-8:

(1) English Language Arts and Reading;

(2) Mathematics;

(3) Science; and

(4) Social Studies.

(c) Generalist: Early Childhood-Grade 6. The Generalist: Early Childhood-Grade 6 certificate may be issued no earlier than September 1, 2008. The holder of the Generalist: Early Childhood-Grade 6 certificate may teach the following content areas in a prekindergarten program, in kindergarten, and in Grades 1-6:

(1) Art;

(2) Health;

(3) Music;

(4) Physical Education;

(5) English Language Arts and Reading;

(6) Mathematics;

(7) Science; and

(8) Social Studies.

(d) [~~(c)~~] The holder of the Generalist: Early Childhood-Grade 4, Bilingual Generalist: Early Childhood-Grade 4, or English as a Second Language Generalist: Early Childhood-Grade 4 certificates may be assigned to teach the content areas specified in subsection (a) of this section in a self-contained classroom in Grades 5 and 6 during the school years 2003-2004, 2004-2005, 2005-2006, and 2006-2007. Standard certificate holders assigned prior to the 2007-2008 school year, in accordance with this subsection, may remain in these assignments, at the discretion of the employing school districts, through the 2009-2010 school year.

(1) The superintendent of a school district or designee must report the assignment to the State Board for Educator Certification in a manner approved by the Texas Education Agency staff [~~executive director~~] .

(2) The superintendent or designee must affirm:

(A) the school district's efforts to recruit and employ a fully certified and qualified teacher for the assignment, including the reason for determining as unqualified each appropriately certified applicant. The district must maintain documentation of its recruiting efforts for a period of two years from the date of the making of the record;

(B) that the holder of one of the certificates specified in this subsection will be provided with a trained mentor for the entire period of the assignment to help the person perform effectively in the assignment; and

(C) that written consent has been obtained from the holder of one of the certificates specified in this subsection prior to assignment to self-contained classes in Grades 5 or 6.

(i) A teacher who refuses to consent to assignment under the provisions of this subsection may not be terminated, nonrenewed, or otherwise retaliated against because of the teacher's refusal to consent to the assignment.

(ii) A teacher's refusal to consent to the assignment under the provisions of this subsection shall not impair a school district's right to implement a necessary reduction in force or other personnel action in accordance with school district policy.

(3) Individuals assigned to self-contained classrooms in Grades 5 and 6 under the provisions of this subsection are subject to the provisions of the Texas Education Code, §21.057.

(4) The provisions of this subsection shall expire on August 1, 2010 [~~2007~~] . The provisions of this subsection include 2009-2010 [~~2006-2007~~] summer school programs and exclude programs beginning in fall 2010 [~~2007~~] .

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 14, 2007.

TRD-200701854

Raymond Glynn

Acting Associate Commissioner, Educator Quality and Standards

State Board for Educator Certification

Earliest possible date of adoption: June 24, 2007

For further information, please call: (512) 475-1497

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19 TAC §233.15

The State Board for Educator Certification (SBEC) proposes an amendment to §233.15, relating to categories of classroom teaching certificates. The section addresses languages other than English certificates. The proposed amendment would expand the certificates issued for languages other than English (LOTE) by adding new certificates for Arabic, Chinese, Japanese, Russian, and Vietnamese in Early Childhood-Grade 12, to be issued no earlier than October 15, 2007.

Texas Education Code (TEC), §21.041(b)(1), authorizes the SBEC to propose rules that provide for the regulation of educators. Currently, 19 TAC §230.193, Teacher Certificate--Secondary, authorizes secondary certification for Grades 6-12 in Spanish, French, German, Latin, Italian, Japanese, Russian, Czech, and Hebrew. Written examinations are available for Spanish, French, German, and Latin; and oral examinations are available in Spanish and French.

Currently, there is no state-approved written or oral examination available for Italian, Japanese, Russian, Czech, or Hebrew. The majority of certificates issued have been for Spanish, French, German, and Latin, with a limited number issued in other languages. In the absence of state-approved examinations in some languages, educator preparation programs preparing candidates for LOTE certification have been responsible for determining language proficiency of candidates through other means of assessment such as interviews, military interpreter instruments, and instruments developed by individuals.

Texas currently does not offer LOTE certification in Arabic, Chinese, or Vietnamese; however, school districts recommend that certificates be created to be responsive to the needs of multicultural communities and to prepare students for increasing globalization of the economy.

On March 9, 2007, the SBEC approved the use of oral and written examinations available through the American Council on the Teaching of Foreign Languages (ACTFL) for Arabic, Chinese, Japanese, Russian, and Vietnamese. Educators seeking certification in Arabic, Chinese, Japanese, Russian, and Vietnamese for Early Childhood-Grade 12 in Texas would be required to complete the appropriate requirements for certification and pass the available ACTFL written and oral examinations for language proficiency.

The proposed amendment to 19 TAC §233.15 would create new subsections (b) - (f) to add new certificates for languages other than English in Arabic: Early Childhood-Grade 12; Chinese: Early Childhood-Grade 12; Japanese: Early Childhood-Grade 12; Russian: Early Childhood-Grade 12; and Vietnamese: Early Childhood-Grade 12. The new certificates would allow the holder to teach in a prekindergarten program, in kindergarten, and in Grades 1-12. The new certificates would be issued no earlier than October 15, 2007.

Raymond Glynn, acting associate commissioner for educator quality and standards, has determined that, for each year of the first five years the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Glynn has determined that, for each year of the first five years, the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be having highly qualified and certified teachers in LOTE classes. Also, districts would be able to begin or expand current LOTE programs to include emerging languages. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Dr. Raymond Glynn, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under TEC, §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and §21.041(b)(4), which requires the SBEC to specify the requirements for the issuance and renewal of an educator certificate.

The proposed amendment implements TEC, §21.031(a) and §21.041(b)(1) and (4).

§233.15. Languages Other Than English.

(a) American Sign Language (ASL): Early Childhood-Grade 12. The American Sign Language (ASL): Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the American Sign Language (ASL): Early Childhood-Grade 12 certificate is eligible to teach American Sign Language in a prekindergarten program, in kindergarten, and in Grades 1-12.

(b) Arabic: Early Childhood-Grade 12. The Arabic: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Arabic: Early Childhood-Grade 12 certificate is eligible to teach Arabic in a prekindergarten program, in kindergarten, and in Grades 1-12.

(c) Chinese: Early Childhood-Grade 12. The Chinese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Chinese: Early Childhood-Grade 12 certificate is eligible to teach Chinese in a prekindergarten program, in kindergarten, and in Grades 1-12.

(d) Japanese: Early Childhood-Grade 12. The Japanese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Chinese: Early Childhood-Grade 12 certificate is eligible to teach Japanese in a prekindergarten program, in kindergarten, and in Grades 1-12.

(e) Russian: Early Childhood-Grade 12. The Russian: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Russian: Early Childhood-Grade 12 certificate is eligible to teach Russian in a prekindergarten program, in kindergarten, and in Grades 1-12.

(f) Vietnamese: Early Childhood-Grade 12. The Vietnamese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Vietnamese: Early Childhood-Grade 12 certificate is eligible to teach Vietnamese in a prekindergarten program, in kindergarten, and in Grades 1- 12.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 14, 2007.

TRD-200701855
Raymond Glynn
Acting Associate Commissioner, Educator Quality and Standards
State Board for Educator Certification
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes amendments to §461.11, concerning Continuing Education. The amendments are being proposed to assist in ensuring the competency of licensees to serve the changing populations of this state.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.11. Continuing Education.

(a) Requirements. All licensees of the Board are obligated to continue their professional education by completing a minimum of 12 hours of continuing education during each year that they hold a license from the Board regardless of the number of separate licenses held by the licensee. Of these 12 hours, all licensees must complete a minimum of three hours of continuing education per year in the areas of ethics, the Board's Rules of Conduct, or professional responsibility, and three hours in areas of diversity training: age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, or socioeconomic status.

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701799
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 305-7706

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.3

The Texas State Board of Examiners of Psychologists proposes amendments to §465.3, concerning Providers of Psychological Services. The amendments are being proposed to make grammatical and punctuation corrections in this rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.3. Providers of Psychological Services.

(a) Psychologists shall employ or utilize an individual to provide psychological services, in any setting not specifically exempt under §501.004(a)(1) of the Psychologists' Licensing Act (the Act), only if:

(1) - (3) (No change.)

(4) The individual is completing supervised experience for purposes of satisfying §501.260(b)(3) of the Act, relating to Licensed Specialist in School Psychology; or [.]

(5) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701800

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.12

The Texas State Board of Examiners of Psychologists proposes amendments to §465.12, concerning Privacy and Confidentiality. The amendments are being proposed to make grammatical corrections in this rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.12. Privacy and Confidentiality.

(a) - (h) (No change.)

(i) Licensees [~~Licenses~~] include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701801
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.13

The Texas State Board of Examiners of Psychologists proposes amendments to §465.13, concerning Personal Problems, Conflicts and Dual Relationship. The amendments are being proposed to clarify the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.13. Personal Problems, Conflicts and Dual Relationships.

(a) In General.

(1) (No change.)

(2) Licensees seek professional assistance for any personal problems, including alcohol or substance abuse [~~use,~~] that have the potential to impair their competency.

(3) (No change.)

(4) Licensees refrain from entering into any professional relationship that [~~which~~] conflicts with their ability to comply with all Board rules applicable to other existing professional relationships.

(5) Licensees withdraw from any professional relationship that conflicts, or comes into conflict with, their ability to comply with Board rules relating to other existing professional relationships. [~~Licensees who find themselves in a professional relationship that conflicts with other professional relationships to the extent that the licensee cannot comply with all applicable Board rules relating to each of the professional relationships must withdraw from any and all relationships to prevent the conflict(s).~~]

(b) Dual Relationships.

(1) A licensee must refrain from entering into a dual relationship with a client, patient, supervisee, student, group, organization, or any other party if such a relationship presents a risk that the dual relationship could impair the licensee's objectivity, prevent the licensee from providing competent psychological services, or exploit or otherwise cause harm to the other party. [~~A licensee must refrain from entering into or agreeing to enter into a dual relationship with a client, patient, supervisee, student or any other individuals if it appears that such a relationship has the potential to impair the licensee's objectivity or otherwise interfere with the licensee's ability to effectively and competently provide psychological services or has any other potential to harm or exploit the other party.~~]

(2) (No change.)

(3) Licensees do not provide psychological services to a person [~~an individual~~] with whom they have had a sexual relationship [~~relationships~~].

(4) Licensees do not terminate [~~the delivery of~~] psychological services with a person [~~an individual~~] in order to have a [~~engage in a~~] sexual relationship with that person.

(5) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701802
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.14

The Texas State Board of Examiners of Psychologists proposes amendments to §465.14, concerning Misuse of Licensees' Services. The amendments are being proposed to clarify the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.14. Misuse of Licensees' Services.

(a) Licensees decline to offer services when limitations or conditions are placed on their work by the patient, client, [~~patient or client~~] or third parties which could foreseeably cause the licensee to violate a Board rule.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701803
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.15

The Texas State Board of Examiners of Psychologists proposes amendments to §465.15, concerning Fees and Financial Arrangements. The amendments are being proposed to clarify the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.15. Fees and Financial Arrangements.

(a) General Requirements.

(1) - (3) (No change.)

(4) In reporting their services to third-party payers, licensees accurately state the nature, date and fees for [~~amount of~~] the services provided, [~~the fees,~~] and the identity of the person(s) [~~individual(s)~~] who actually provided the services.

(b) Ethical and Legal Requirements. [~~Aspects.~~]

(1) - (3) (No change.)

(4) Licensees do not receive payments from or divide fees with another health care provider in exchange for professional referrals.

(5) A licensee does not participate in bartering if it is clinically contra-indicated [~~contraindicated~~] or if bartering [~~the relationship~~] has the potential to create an exploitative or harmful dual relationship.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701804
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.16

The Texas State Board of Examiners of Psychologists proposes amendments to §465.16, concerning Evaluation, Assessment,

Testing, and Reports. The amendments are being proposed to clarify the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.16. Evaluation, Assessment, Testing, and Reports.

(a) Scope and Purpose.

(1) Licensees clearly describe the scope and purpose of evaluation, assessment, and testing to patients before they provide these psychological services. [~~Before performing evaluations, testing and assessments, licensees clearly define the purposes and scope to the subject(s) of the evaluations, testing and/or assessments.~~]

(2) Licensees produce reports that clearly state and accurately reflect the scope and purpose of evaluation, assessment, and testing. [~~Licensees produce reports consistent with and which clearly state the purpose and scope of the evaluations, testing and/or assessments.~~]

(b) Reliability and Validity.

(1) Licensees verify, by signature and date, that every evaluation, assessment, test result, report, recommendation, or psychological diagnostic or evaluative statement produced is based on information and techniques sufficient to provide appropriate substantiation for its findings. [~~Licensees produce or co-sign only assessments, recommendations, reports or psychological diagnostic or evaluative statements that are based on information and techniques sufficient to provide appropriate substantiation for the findings.~~]

(2) - (5) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701805
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.17

The Texas State Board of Examiners of Psychologists proposes amendments to §465.17, concerning Therapy and Counseling. The amendments are being proposed to clarify the rule and to require that treatment plans be in writing.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.17. Therapy and Counseling.

(a) (No change.)

(b) Treatment plans.

(1) Licensees create specific written treatment plans that include, at a minimum, agreed upon goals of the treatment, the techniques to be used, and the tentative duration of the treatment for any therapy or counseling that they provide.

(2) - (3) (No change.)

(4) Licensees confer with and obtain consent from the patient, or client or other recipient(s) of services [~~recipient(s)~~] concerning significant alterations in the treatment plan in accordance with Board rule 465.11(a)(2) [~~465.11(b)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701806
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.18

The Texas State Board of Examiners of Psychologists proposes amendments to §465.18, concerning Forensic Services. The amendments are being proposed to clarify the rule and add a new provision concerning forensic testimony on child visitation.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.18. Forensic Services.

(a) (No change.)

(b) Limitation on Services.

(1) A licensee shall refrain from rendering a written or oral professional opinion about any matter for which the licensee lacks appropriate knowledge, competency, and data. [~~A licensee who is asked to provide an opinion concerning an area or matter about which the licensee does not have the appropriate knowledge and competency to render a professional opinion shall decline to render that opinion.~~]

(2) - (5) (No change.)

(c) Describing the Nature of Services. A licensee must adhere to the requirements of Board rule 465.11 for provision of informed consent, and in addition, must specifically inform the patient, client, or other recipient(s) of forensic psychological services of the following: [~~Licensees who interview or examine an individual for purposes of providing forensic services must first inform the individual of the specific purpose of the interview or examination, the party on whose behalf they are performing the services, the use to which the information gathered will be put and who will have access to the results. If there are multiple parties, the psychologist must obtain written informed consent from all adult participants unless informed consent is precluded by court order. All participants must be made aware of the purpose and scope of the evaluation, who has requested the service, and who will be paying fees. Psychologists also inform parties on limits to confidentiality where the engagement involves testimony.~~]

(1) The specific purpose and scope of the interview, examination, or evaluation;

(2) The identity of the party who requested the psychologist's services;

(3) The identity of the party who will pay the psychologist's fees and the estimated amount of the fees;

(4) The type of information sought and the uses for information gathered;

(5) The people or entities who will have access to the results;

(6) The manner of delivery of any reports or written results;

(7) The approximate length of time required to produce any reports or written results;

(8) Applicable limits on confidentiality; and

(9) Whether the psychologist will likely be called to provide testimony based on the report or written results in a court of law.

(d) (No change.)

(e) Child Visitation.

(1) A licensee who provides therapy and/or counseling to a child must limit forensic testimony to statements for which the licensee has sufficient basis pursuant to Board rule 465.10.

(2) Prior to stating a visitation recommendation, a licensee must include a statement as to all pertinent limitations pursuant to rule 465.16(c).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701808
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 305-7706

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CHAPTER 471. RENEWALS

22 TAC §471.5

The Texas State Board of Examiners of Psychologists proposes amendments to §471.5, concerning Updated Information Requirements. The amendments are being proposed to make a grammatical correction to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§471.5. Updated Information Requirements.

Each licensee shall provide the following information when renewing his/her license each year:

(1) If the licensee has ever been arrested, indicted [~~indicated~~], or convicted of any criminal offense which the licensee has not previously reported to the Board;

(2) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701809
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 305-7706

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PART 31. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

CHAPTER 711. DIETITIANS

22 TAC §711.2

The Texas State Board of Examiners of Dietitians (board) proposes an amendment to §711.2, concerning the licensing and regulation of dietitians. Specifically, the amendment covers late renewal fees.

BACKGROUND AND PURPOSE

The proposed amendment relates to late renewal fees required by statutory changes to the Texas Occupations Code, Chapter 701, by House Bill 1155, passed during the 79th Legislature, Regular Session, 2005.

SECTION-BY-SECTION SUMMARY

The amendment to §711.2 reflects the change in the method of calculating the late renewal fee in accordance with Texas Occupations Code, Chapter 701, specifically §701.301(d). The statute provides that a person whose license has been expired for 90 days or less may renew the license by paying to the board a fee that is equal to 1-1/4 times the amount of the renewal fee. The statute further provides that if a person's license has been expired for more than 90 days, but less than one year, the person may renew the license by paying to the board a fee that is equal to 1-1/2 times the amount of the renewal fee. The late renewal fees are proposed for adjustment to comply with the statutory directive.

FISCAL NOTE

Bobbe Alexander, Executive Secretary, has determined that for each year of the first five years the section is in effect, there will be fiscal implications to state government as a result of enforcing or administering the section as proposed. There will be a decrease in general revenue of $4130 each year of the first five years the section is in effect. There will be no fiscal implications to local government.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Alexander has also determined that there will be no economic costs to small businesses or micro-businesses. This was determined by interpretation of the rule that these entities will not be required to alter their business practices to comply with the section as proposed. The rule relates to individuals who are licensed as dietitians, and there are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Alexander has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to effectively regulate the practice of dietetics in Texas, which will protect and promote public health, safety, and welfare, and to ensure that statutory directives are carried out.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bobbe Alexander, Executive Secretary, State Board of Examiners of Dietitians, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by email to: dietitian@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY

The proposed amendment is authorized by the Texas Occupations Code, §701.152, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The proposed amendment affects the Texas Occupations Code, Chapter 701.

§711.2. The Board's Operation.

(a) - (q) (No change.)

(r) Fees.

(1) Schedule of fees for licensure as a dietitian:

(A) application (includes two year initial license) fee--$108;

(B) license fee for upgrade of provisional licensed dietitian--$20;

(C) renewal fee: an initial regular license or a renewal regular license--$90;

~~*[(i)* for license issued for a one-year term--$45;]~~

~~*[(ii)* for license issued for a two-year term--$90;]~~

~~[(D) late renewal fee for license issued for a one-year term:]~~

~~*[(i)* $107.50 when renewed on or within 90 days of expiration;]~~

~~*[(ii)* $170.00 when renewed later than 90 days but less than one year;]~~

(D) [~~(E)~~] late renewal fee [~~for license issued for a two-year term~~]:

(i) $112.50 [~~$152.50~~] when renewed on or within 90 days of expiration;

(ii) $135.00 [~~$215.00~~] when renewed later than 90 days but less than one year.

(2) Schedule of fees for licensure as a temporary licensed dietitian:

(A) application (includes initial license) fee--$54;

(B) license certificate and identification card replacement fee--$20;

(3) Schedule of fees for licensure as a provisional licensed dietitian:

(A) application (includes initial license) fee--$54;

(B) renewal fee for license issued for a one-year term--$45;

(C) late renewal fee;

(i) [~~(D)~~] $56.25 [~~$107.50~~] when renewed on or within 90 days of expiration;

(ii) [~~(E)~~] $67.50 [~~$170.00~~] when renewed later than 90 days but less than one year;

(4) Additional fees for licensure as a dietitian, temporary licensed dietitian, and a provisional licensed dietitian:

(A) application processing fee for preplanned professional experience approval--$300;

(B) inactive status fee--$20;

(C) license reinstatement fee following suspension under the Family Code--$80;

(D) written verification of licensure fee--$25; and

(E) returned check fee--$25.

(5) - (12) (No change.)

(s) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 14, 2007.

TRD-200701857
Janet Hall
Acting Chair
Texas State Board of Examiners of Dietitians
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §50.31 and §50.131.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 1998, the commission entered into a Memorandum of Understanding (MOU) with the United States Environmental Protection Agency (EPA) related to the Texas Pollutant Discharge Elimination System (TPDES) program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the United States (U.S.) under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. This rulemaking removes references to concentrated animal feeding operations under Chapter 321 that are obsolete and no longer applicable.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 321, Control of Certain Activities by Rule and 30 TAC Chapter 305, Consolidated Permits.

SECTION BY SECTION DISCUSSION

The commission proposes amendments to §50.31(c)(9) to remove the references to concentrated animal feeding operations (CAFOS) under Chapter 321, Subchapter K from the list of applications that are subject to §50.31. Section 50.31(c)(10) has been renumbered accordingly.

The commission proposes amendments to §50.131(c)(7) to remove the references to concentrated animal feeding operations (CAFOS) under Chapter 321, Subchapter K from the list of things excluded from coverage under §50.131. Section 50.131(c)(8) has been renumbered accordingly.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules would eliminate rules governing wastewater discharges that have been replaced by general permits authorized under the Texas Pollutant Discharge Elimination System (TPDES).

The discharge of wastewater from certain activities into or adjacent to water in the state is authorized by 30 Texas Administrative Code (TAC), Chapter 321. In 1998, the commission entered into a Memorandum of Understanding (MOU) with the EPA related to the TPDES program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the U.S. under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. As a result, some subchapters of Chapter 321 are now obsolete

and/or do not meet the federal requirements for discharges into waters of the United States as required by TPDES. This rulemaking repeals the subchapters that have been replaced by general permits and discharges governed by TPDES individual permits. In addition, this rulemaking amends parts of 30 TAC Chapter 50, Action on Applications and other Authorizations and 30 TAC Chapter 305, Consolidated Permits, as needed to coincide with the repeal of these obsolete subchapters.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes in the proposed rules will be the elimination of extraneous rules that are no longer valid.

No fiscal implications are anticipated for regulated entities since they will still be required to comply with requirements that replaced the obsolete subchapters now being eliminated in this rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses must still comply with the requirements that replaced the obsolete subchapters now being eliminated in this rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed actions are amendments to remove obsolete references to concentrated animal feeding operations in Chapter 321. Chapter 321, Subchapters G, H, J, K, M, and O are specified for repeal because they are inactive, obsolete, and have been replaced by TPDES general permits. Therefore, it is not anticipated that the proposed amendments will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed amendments do not meet the definition of a ”major environmental rule.”

Furthermore, even if the proposed amendments did meet the definition of a major environmental rule, the proposed amendments are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendments to §50.31 or §50.131 will not cause any of the results listed in §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed amendments do not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed amendments and performed an assessment of whether the proposed amendments constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to remove references to inactive and obsolete sections that have been replaced by general permits. The proposed amendments would substantially advance this stated purpose. Promulgation and enforcement of these proposed amendments would be neither a statutory nor a constitutional taking of private real property because the proposed amendments do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed amendments would eliminate an unnecessary reference to an obsolete rule that is being repealed. Because the amendments do not affect real property, they do not burden, restrict, or limit an owner’s right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the amendment. Therefore, these amendments will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the proposed amendments, which are procedural mechanisms for removing references to subchapters no longer applicable, are consistent with CMP goals and policies and will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lisa Martin, Texas Register Team, Texas Commission on Environmental Quality, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at http://www5.tceq.state.tx.us/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2006-051-321-PR. The comment period closes June 25, 2007. For further information, please contact Yvonna Pierce, Wastewater Permits Section, (512) 239-6922.

SUBCHAPTER C. ACTION BY EXECUTIVE DIRECTOR

30 TAC §50.31

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; and §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The proposed amendment implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

§50.31. Purpose and Applicability.

(a) - (b) (No change.)

(c) This subchapter does not apply to:

(1) - (7) (No change.)

(8) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

[~~(9) concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations);~~]

(9) [~~(10)~~] an application for creation of a municipal management district under Local Government Code, Chapter 375. [~~; and~~]

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701830
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 239-1966

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SUBCHAPTER G. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.131

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; and §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The proposed amendment implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

§50.131. Purpose and Applicability.

(a) - (b) (No change.)

(c) In addition to those things excluded from coverage under this chapter in §50.102 of this title (relating to Applicability), this subchapter does not apply to:

(1) - (5) (No change.)

(6) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

[~~(7) concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations); and~~]

(7) [~~(8)~~] an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 11, 2007.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-1966

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CHAPTER 305. CONSOLIDATED PERMITS

SUBCHAPTER O. ADDITIONAL CONDITIONS AND PROCEDURES FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS

30 TAC §305.539

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §305.539.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 1998, the commission entered into a Memorandum of Understanding (MOU) with the United States Environmental Protection Agency (EPA) related to the Texas Pollutant Discharge Elimination System (TPDES) program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the United States (U.S.) under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. This rulemaking removes references to Chapter 321 that are obsolete and no longer applicable.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 50, Action on Applications and Other Authorizations and 30 TAC Chapter 321, Control of Certain Activities by Rule.

SECTION DISCUSSION

The commission proposes amendments to §305.539(a)(1) and (a)(2) to remove the obsolete references to 30 TAC §321.271 that are no longer applicable.

The commission proposes amendments to §305.539(a)(4)(B) and (D) and §305.539(a)(5) and (6) to update the agency's name.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules would eliminate rules governing wastewater discharges that have been replaced by general permits authorized under the Texas Pollutant Discharge Elimination System (TPDES).

The discharge of wastewater from certain activities into or adjacent to water in the state is authorized by 30 Texas Administrative Code (TAC), Chapter 321. In 1998, the commission entered into a Memorandum of Understanding (MOU) with the EPA related to the TPDES program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the U.S. under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. As a result, some subchapters of Chapter 321 are now obsolete and/or do not meet the federal requirements for discharges into waters of the United States as required by TPDES. This rulemaking repeals the subchapters that have been replaced by general permits and discharges governed by TPDES individual permits. In addition, this rulemaking amends parts of 30 TAC Chapter 50, Action on Applications and other Authorizations and 30 TAC Chapter 305, Consolidated Permits, as needed to coincide with the repeal of these obsolete subchapters.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes in the proposed rules will be the elimination of extraneous rules that are no longer valid.

No fiscal implications are anticipated for regulated entities since they will still be required to comply with requirements that replaced the obsolete subchapters now being eliminated in this rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses must still comply with the requirements that replaced the obsolete subchapters now being eliminated in this rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed actions are amendments to remove obsolete references to Chapter 321. Chapter 321, Subchapters G, H, J, K, M, and O are specified for repeal because they are inactive, obsolete, and have been replaced by TPDES general permits. Therefore, it is not anticipated that the proposed amendments will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed amendments do not meet the definition of a ”major environmental rule.”

Furthermore, even if the proposed amendments did meet the definition of a major environmental rule, the proposed amendments are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendments to §305.539(a)(1) and (2) or §305.539(a)(4)(B) and (D) or §305.539(a)(5) and (6) will not cause any of the results listed in §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed amendments do not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed amendments and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to remove references to inactive and obsolete sections that have been replaced by general permits. The proposed amendments would substantially advance this stated purpose. Promulgation and enforcement of these proposed amendments would be neither a statutory nor a constitutional taking of private real property because the proposed amendments do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed amendments would eliminate an unnecessary and obsolete rule. Because the amendments do not affect real property, they do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of amendments. Therefore, these proposed amendments will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the proposed amendments, which are procedural mechanisms for removing references to subchapters no longer applicable, are consistent with CMP goals and policies and will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lisa Martin, Texas Register Team, Texas Commission on Environmental Quality, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at http://www5.tceq.state.tx.us/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2006-051-321-PR. The comment period closes June 25, 2007. For further information, please contact Yvonna Pierce, Wastewater Permits Section, (512) 239-6922.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; and §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The proposed amendment implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

§305.539. Additional Requirements for Shrimp Aquaculture Facilities Within the Coastal Zone.

(a) A commercial aquaculture facility, located within the coastal zone as delineated under rules of the Coastal Coordination Council, 31 TAC §503.1, and engaged in the production of shrimp that will discharge into water in the state shall comply with the following requirements.

(1) The applicant shall apply to the executive director for an individual Texas pollutant discharge elimination system (TPDES) permit. The [~~Unless the application was submitted for an existing facility, as defined in §321.271 of this title, before January 26, 1998, the~~] application, in addition to the information required by the application form, shall include:

(A) - (B) (No change.)

(2) The applicant shall obtain an individual TPDES wastewater discharge permit in accordance with the requirements of this chapter before discharging into water in the state[~~, except for an existing facility, as defined in §321.271 of this title, that submitted an application for an individual permit before January 26, 1998 that has not been withdrawn by the applicant or denied by the commission~~].

(3) (No change.)

(4) The facility shall comply with the terms and conditions of its individual TPDES permit, and any quarantine conditions imposed by TPWD, except in cases where the facility is in imminent danger of overflow, flooding, or similar conditions that could result in either the release of exotic species that are regulated by the TPWD or that would result in the violation of a quarantine condition imposed by the TPWD. In such cases, the facility may discharge effluent in excess of the permitted flow rates, but only to the extent necessary to comply with an emergency plan that is approved by the TPWD, and the following provisions shall also apply.

(A) (No change.)

(B) A facility shall notify the appropriate TCEQ [~~TNRCC~~] regional office at least 48 hours, or as soon as practicable, prior to initiating any action under an emergency plan in response to an emergency event, such as landfall of a hurricane, and shall notify the regional office as soon as practicable following initiation of the emergency plan.

(C) (No change.)

(D) Within 30 days following initiation of the emergency plan, the facility shall submit a written report to the appropriate TCEQ [~~TNRCC~~] regional office that includes the following information:

(i) - (v) (No change.)

(E) (No change.)

(5) A facility engaged in the propagation or rearing of shrimp which exhibit one or more manifestations of disease as defined by TPWD in 31 TAC §57.111 and §69.75 shall immediately report the apparent disease to the TCEQ [~~TNRCC~~] regional office and Wastewater Permitting Section, and to TPWD, and shall comply with 31 TAC §57.114 and §69.77. The executive director shall be immediately notified of the results of any analyses by a shellfish disease specialist. Any actions which are deemed necessary by the discharger to prevent transmission of the disease to aquatic life endemic to waters in the state shall be implemented as soon as possible. The executive director may require suspension or termination of the discharge of effluent from infected portions of the facility as is necessary to protect aquatic life in the receiving stream from potential adverse effects.

(6) A facility required to hold a permit from TPWD regulating the possession and sale of exotic fish and shellfish shall immediately notify the TCEQ [~~TNRCC~~] regional office and Wastewater Permitting Section if the TPWD places the facility under quarantine condition. There shall be no discharge during the quarantine period, except upon approval by the executive director and TPWD. The executive director and TPWD may suspend or terminate the prohibition on discharge to allow for implementation of the facility's emergency plan approved by TPWD, following the lifting of the quarantine condition by TPWD, or based on other relevant factors.

(7) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701832
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 239-1966

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CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

The Texas Commission on Environmental Quality (TCEQ or commission) proposes the repeal of §§321.101 - 321.109, 321.131 - 321.138, 321.151 - 321.159, 321.181 - 321.198, 321.231 - 321.240, and 321.271 - 321.280.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEALS

Chapter 321 authorizes the discharge of wastewater from certain activities into or adjacent to water in the state. In 1998, the commission entered into a Memorandum of Understanding (MOU) with the United States Environmental Protection Agency (EPA) related to the Texas Pollutant Discharge Elimination System (TPDES) program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the United States (U.S.) under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. Certain subchapters of Chapter 321 are now obsolete and/or do not meet the federal requirements for discharges into waters of the United States as required by the TPDES program. This rulemaking repeals the subchapters that have been replaced by general permits and coverage is also available under a TPDES individual permit.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 50, Action on Applications and other Authorizations and 30 TAC Chapter 305, Consolidated Permits.

SECTION BY SECTION DISCUSSION

The proposed rulemaking would repeal Subchapter G, Subchapter H, Subchapter J, Subchapter K, Subchapter M, and Subchapter O in their entirety, in accordance with the directive indicated by the 1998 MOU between the TCEQ and EPA. These subchapters are no longer applicable and they have been replaced by the following TPDES general permits: Subchapter G is replaced by TPDES General Permit TXG670000; Subchapter H is replaced by TPDES General Permit TXG830000; Subchapter J is replaced by TPDES General Permit TXG110000; Subchapter K is replaced by TPDES General Permit TXG920000; Subchapter M is replaced by TPDES General Permit TXG340000; and Subchapter O is replaced by TPDES General Permit TXG130000.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules would eliminate rules governing wastewater discharges that have been replaced by general permits authorized under the Texas Pollutant Discharge Elimination System (TPDES).

The discharge of wastewater from certain activities into or adjacent to water in the state is authorized by 30 Texas Administrative Code (TAC), Chapter 321. In 1998, the commission entered into a Memorandum of Understanding (MOU) with the EPA related to the TPDES program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the U.S. under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. As a result, some subchapters of Chapter 321 are now obsolete and/or do not meet the federal requirements for discharges into waters of the United States as required by TPDES. This rulemaking repeals the subchapters that have been replaced by general permits and discharges governed by TPDES individual permits. In addition, this rulemaking amends parts of 30 TAC Chapter 50, Action on Applications and other Authorizations and 30 TAC Chapter 305, Consolidated Permits, as needed to coincide with the repeal of these obsolete subchapters.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the changes in the proposed rules will be the elimination of extraneous rules that are no longer valid.

No fiscal implications are anticipated for regulated entities since they will still be required to comply with requirements that replaced the obsolete subchapters now being eliminated in this rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses must still comply with the requirements that replaced the obsolete subchapters now being eliminated in this rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 321, Subchapters G, H, J, K, M, and O are specified for repeal because they are inactive, obsolete, and have been replaced by TPDES general permits. Therefore, it is not anticipated that the proposed repeals will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed repeals do not meet the definition of a "major environmental rule."

Furthermore, even if the proposed repeals did meet the definition of a major environmental rule, the proposed repeals are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed repeals of §§321.101 - 321.109, 321.131 - 321.138, 321.151 - 321.159, 321.181 - 321.198, 321.231 - 321.240, and 321.271 - 321.280 will not cause any of the results listed in §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed repeals do not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed repeals and performed an assessment of whether the proposed repeals constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed action is to repeal inactive and obsolete subchapters that have been replaced by general permits. The proposed repeals would substantially advance this stated purpose. Promulgation and enforcement of these proposed repeals would be neither a statutory nor a constitutional taking of private real property because the proposed repeals do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed repeals would eliminate unnecessary and obsolete rules. Because the repeals do not affect real property, they do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, these proposed repeals will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the repeals, which are procedural mechanisms for removing subchapters no longer applicable, are consistent with CMP goals and policies and will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation of the repeals will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lisa Martin, Texas Register Team, Texas Commission on Environmental Quality, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at http://www5.tceq.state.tx.us/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2006-051-321-PR. The comment period closes June 25, 2007. For further information, please contact Yvonna Pierce, Wastewater Permits Section, (512) 239-6922.

SUBCHAPTER G. HYDROSTATIC TEST DISCHARGES

30 TAC §§321.101 - 321.109

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

§321.101. Definitions.

§321.102. Applicability.

§321.103. New Facilities.

§321.104. Used Facilities.

§321.105. Registration.

§321.106. General Requirements for Discharges.

§321.107. Specific Requirements for Discharges.

§321.108. Restrictions.

§321.109. Enforcement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701833
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 239-1966

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SUBCHAPTER H. DISCHARGE TO SURFACE WATERS FROM TREATMENT OF PETROLEUM SUBSTANCE CONTAMINATED WATERS

30 TAC §§321.131 - 321.138

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

§321.131. Definitions.

§321.132. Applicability.

§321.133. Discharge of Water Contaminated by Gasoline, Jet Fuel or Kerosene.

§321.134. Discharge of Water Contaminated by Other Petroleum Substances.

§321.135. Telephone Utilities.

§321.136. Restrictions.

§321.137. Enforcement.

§321.138. Reservation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
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SUBCHAPTER J. DISCHARGES TO SURFACE WATERS FROM READY-MIXED CONCRETE PLANTS AND/OR CONCRETE PRODUCTS PLANTS OR ASSOCIATED FACILITIES

30 TAC §§321.151 - 321.159

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

§321.151. Definitions.

§321.152. Purpose and Applicability.

§321.153. Certificate of Registration and Public Notice.

§321.154. General Requirements for Discharge.

§321.155. Specific Requirements for Discharge.

§321.156. Sampling, Reporting, and Recordkeeping.

§321.157. Restrictions.

§321.158. Enforcement and Revocation.

§321.159. Annual Waste Treatment Fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
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Texas Commission on Environmental Quality
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SUBCHAPTER K. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §§321.181 - 321.198

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

§321.181. Waste and Wastewater Discharge and Air Emission Limitations.

§321.182. Definitions.

§321.183. Applicability.

§321.184. Application Requirements.

§321.185. Application Review.

§321.186. Notice of Application.

§321.187. Public Comments.

§321.188. Permit Issuance.

§321.189. Amendments.

§321.190. Renewal.

§321.191. Proper CAFO Operation and Maintenance.

§321.192. Pollution Prevention Plans.

§321.193. Best Management Practices.

§321.194. Other Requirements.

§321.195. Monitoring and Reporting Requirements.

§321.196. Registration.

§321.197. Dairy Outreach Program Areas.

§321.198. Effect of Conflict or Invalidity of Rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER M. DISCHARGES TO SURFACE WATERS FROM PETROLEUM BULK STATIONS AND TERMINALS

30 TAC §§321.231 - 321.240

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

§321.231. Definitions.

§321.232. Purpose and Applicability.

§321.233. Active Permits.

§321.234. Certificate of Registration and Public Notice.

§321.235. General Requirements for Discharge.

§321.236. Specific Requirements for Discharge.

§321.237. Sampling, Reporting, and Recordkeeping.

§321.238. Restrictions.

§321.239. Enforcement and Revocation.

§321.240. Annual Waste Treatment Fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 239-1966

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SUBCHAPTER O. DISCHARGES FROM AQUACULTURE PRODUCTION FACILITIES

30 TAC §§321.271 - 321.280

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

§321.271. Definitions.

§321.272. Purpose and Applicability.

§321.273. Certificate of Registration and Public Notice.

§321.274. GroundWater Protection.

§321.275. Waste Utilization or Disposal by Land Application of Wastewater and Pond Bottom Sludges.

§321.276. Edwards Aquifer.

§321.277. Required Best Management Practices and Specific Requirements for Discharge.

§321.278. General Requirements.

§321.279. Enforcement and Revocation, Suspension, or Annulment.

§321.280. Annual Waste Treatment Fee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

The Texas Parks and Wildlife Department (the department) proposes the repeal of §65.310, amendments to §§65.309, 65.312, 65.313, 65.315, 65.318 - 65.321, and new §65.301 and §65.310, concerning the Migratory Game Bird Proclamation.

New §65.301, concerning Applicability, would clearly establish that the subchapter governs all migratory bird hunting in the state. The proposed new section also would clarify that nothing in the subchapter is to be construed to supersede the requirements of Title 50, Part 20, of the United States Code of Federal Regulations (50 CFR Part 20). Under the Migratory Bird Treaty Act of 1918, the U.S. Fish and Wildlife Service (Service) is responsible for establishing the basic regulatory frameworks for the management of migratory birds in the United States, including provisions governing the hunting of migratory birds, such as season lengths, bag and possession limits, means and methods, and documentation requirements. Each state may adopt rules to implement the federal regulations, but may not adopt rules that are inconsistent with the federal rules.

The proposed amendment to §65.309, concerning Definitions, would add definitions that are currently contained either in §65.3, concerning the Statewide Hunting and Fishing Proclamation, or 50 CFR Part 20. The provisions are being moved in order to create a consolidated body of regulations in a single subchapter. Each of the definitions is currently in effect as part of state or federal law, so the effect of the proposed amendment is nonsubstantive.

For many years, current §65.310 has contained what is essentially a summary or abstract of the federal regulations. Proposed new §65.310 would replace the current rule with the exact language from the federal regulation concerning illegal means and methods, with slight conforming changes where necessary to accommodate terminological variations or to provide clarification. For instance, the federal regulation specifies that no pistol or rifle may be use to take migratory game birds. Proposed new §65.310(1) would add language to clarify that the prohibition includes airguns. The department notes that the proposed action is nonsubstantive; it neither creates new or additional provisions nor materially alters provisions of the federal or state laws currently in effect.

The proposed amendment to §65.312, concerning Possession of Migratory Game Birds, would clarify that a properly completed wildlife resource document (WRD) satisfies the tagging requirements of 50 CFR Part 20. The amendment is necessary to ensure that the regulations are clear as to the legal requirements concerning the possession and documentation of migratory game birds.

The proposed amendment to §65.313, concerning General Rules, would add a new subsection (d) to clarify a federal provision and a new subsection (e) to adopt certain federal provisions by reference.

Under Parks and Wildlife Code, §64.007, no person may possess a live game bird except as authorized by the code. Under Parks and Wildlife Code, §62.011, it is an offense for any person who wounds a game bird not to make a reasonable effort to retrieve the bird and include it in the daily bag limit. Proposed new §65.313(d) would clearly state that wounded birds must be immediately killed and be made part of the daily bag limit.

The proposed amendment would also create a new subsection (e) to adopt certain federal regulations by reference. The department has determined that 50 CFR Part 20 Subparts E (Transportation within the United States), F (Exportation), G (Importation), and H (Federal, State, and Foreign Law) do not offer any conflict of interpretation or pose a possibility for confusion as written and thus do not need to be reproduced verbatim in state regulations. Therefore, the department proposes to adopt them by reference.

The proposed amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season Species, would adjust the season dates for early-season species of migratory game birds to account for calendar-shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years). The proposed amendment would implement a 16-day teal season to run from September 15 - 30, 2007, which must be approved by the Service before it can be implemented. If the Service does not approve a 16-day season, the department will adopt a 9-day season to run September 22 - 30, 2007.

The proposed amendment to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season Species, adjusts the season dates for late-season species of migratory game birds to account for calendar-shift. The proposed amendment also would allow for the take of geese during the special youth-only season. By federal law, the special youth-only season is limited to ducks; however, there is the possibility that the Service might authorize the take of geese during the youth-only season. The amendment is necessary to provide the greatest opportunity possible, particularly to youth.

The proposed amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry to reflect calendar shift. The proposed amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates for the take of late-season species of migratory game birds by means of falconry, also to reflect calendar shift.

The proposed amendment to §65.321, concerning Special Management Provisions, would adjust the dates for the conservation season on light geese to account for calendar shift and insert language to prevent conflicts with §65.310. The Service has provided that the use of amplified or electronic calls and unplugged shotguns is lawful during the light goose conservation season.

The proposed amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter preference for season starting dates and segment lengths, under frameworks issued by the Service. The Service has not issued regulatory frameworks for the 2007 - 2008 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative and may change significantly, depending on federal actions. However, it is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, un-

der the frameworks in order to provide maximum hunter opportunity.

Robert Macdonald, regulations coordinator, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the rules as proposed.

Mr. Macdonald also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds, as well as the implementation of commission policy to maximize recreational opportunity for the citizens of the state.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed. Since the major factors that could negatively affect participation and/or economic activity associated with migratory bird hunting, such as reductions in bag and possession limits, season lengths, and zone boundary changes are established by the Service and cannot be negated or altered by state action, the department would have no choice but to implement them. However, it is the policy of the Texas Parks and Wildlife Commission policy to provide the maximum opportunity possible under the federal frameworks.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Vernon Bevill, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4578 or 1-800-792-1112.

31 TAC §§65.301, 65.309, 65.310, 65.312, 65.313, 65.315, 65.318 - 65.321

The amendments and new sections are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The amendments and new sections affect Parks and Wildlife Code, Chapter 64.

§65.301. Applicability.

(a) No person shall at any time, by any means, or in any manner hunt, possess, transport, or transfer any migratory game bird except as provided in this subchapter.

(b) No provision of this subchapter shall be construed to relieve a person from the restrictions, conditions, and requirements of federal regulations contained in 50 Code of Federal Regulations (CFR) Part 20.

§65.309. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in Subchapter A of this chapter (relating to Statewide Hunting and Fishing Proclamation).

(1) Baited area--Any area where salt, grain, or other feed has been placed, exposed, deposited, distributed, or scattered, if that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for ten days following the complete removal of all such salt, grain, or other feed.

(2) Baiting--The direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them.

(3) Daily bag limit--The quantity of a species of migratory game bird that may be lawfully taken in one day.

(4) Day--A 24-hour period of time that begins at midnight and ends at midnight.

(5) [~~(3)~~] Dark geese--Canada, white-fronted, and all other geese except light geese.

(6) [~~(4)~~] Harvest Information Program (HIP)--A mandatory certification process for all persons who hunt or intend to hunt migratory game birds. To be certified, a person must answer a series of questions about their migratory game-bird hunting habits.

(7) [~~(5)~~] Legal shotgun--A shotgun not larger than 10 gauge, fired from the shoulder, and incapable of holding more than three shells. (Guns capable of holding more than three shells must be plugged with a one-piece filler which is incapable of removal without disassembling the gun, so the gun's total capacity does not exceed three shells.)

(8) [~~(6)~~] Light geese--Snow, blue, and Ross' geese.

(9) [~~(7)~~] Livestock--Cattle, horses, mules, sheep, goats, and hogs.

(10) [~~(8)~~] Manipulation--The alteration of natural vegetation or agricultural crops, including but not limited to mowing, shredding, discing, rolling, chopping, trampling, flattening, burning, and herbicide treatments. Manipulation does not include the distributing or scattering of grain, seed, or other feed after removal from or storage on the field where grown.

(11) Migratory bird preservation facility--A stationary facility designed and constructed to store or process game animals and game birds.

(12) [~~(9)~~] Natural vegetation--Any non-agricultural, native, or naturalized plant species that grows at a site in response to planting or from existing seeds or propagule. Natural vegetation does not include planted millet. However, planted millet that grows on its own in subsequent years after the planting is considered natural vegetation.

(13) [~~(10)~~] Nontoxic shot--Any shot approved by the director, U.S. Fish and Wildlife Service.

(14) [~~(11)~~] Normal agricultural practice--A normal agricultural planting, harvesting, or post-harvest manipulation, or livestock feeding conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(15) [~~(12)~~] Normal soil stabilization practice--a planting for agricultural soil erosion control or post-mining land reclamation conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(16) Paraplegic--An individual afflicted with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.

(17) Possession limit--The maximum number of a species of migratory game bird that may be lawfully possessed at one time.

(18) [~~(13)~~] Personal residence (personal abode)--One's principal or ordinary home or dwelling place. The term does not include a temporary or transient place of residence or dwelling such as a hunting club, or any club house, cabin, tent, or trailer house used as a hunting club, or any hotel, motel, or rooming house used during a hunting, pleasure, or business trip.

(19) [~~(14)~~] Sinkbox--Any type of low floating device having a depression which affords the hunter a means of concealing himself below the surface of water.

(20) [~~(15)~~] Waterfowl--ducks (including teal), geese, mergansers, and coots.

[~~(16) Wildlife resource--For the purposes of this subchapter, wildlife resource includes all migratory birds.~~]

§65.310. Means and Methods.

Migratory birds may be taken by any method except those prohibited in this section. Except as provided in this subchapter, no person shall take migratory game birds:

(1) with a trap, snare, net, any type of rifle or pistol (including airguns), swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machinegun, fish hook, poison, drug, explosive, or stupefying substance;

(2) with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(3) from or by means, aid, or use of a sinkbox or any other type of low-floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

(4) from or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;

(5) from or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and/or the sails furled, and its progress therefrom has ceased. A craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power;

(6) by the use or aid of live birds as decoys;

(7) where tame or captive live ducks or geese are present unless such birds are and have been for a period of 10 consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl;

(8) by the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds;

(9) by means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird;

(10) by the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited. No person may place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area. However, provided a land or area is not otherwise baited, nothing in this paragraph prohibits:

(A) the taking of any migratory game bird, including waterfowl, coots, and cranes on or over:

(i) standing crops or flooded standing crops (including aquatics);

(ii) standing, flooded, or manipulated natural vegetation;

(iii) flooded harvested croplands; or

(iv) lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(v) from a blind or other place of concealment camouflaged with natural vegetation;

(vi) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(vii) on or over standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds; or

(B) the taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation; or

(11) while possessing loose shot that is not non-toxic shot or shotshells containing any shot other than non-toxic shot.

§65.312. Possession of Migratory Game Birds.

(a) For all migratory birds taken for which there is a possession limit, the possession limit shall apply until the birds have reached the personal residence of the possessor and are finally processed.

(b) A person may give, leave, receive, or possess any species of legally taken migratory game birds, or parts of birds, that are protected by a bag or possession limit, if the birds are accompanied by a wildlife resource document (WRD) from the person who killed the birds. For example, a WRD [~~wildlife resource document~~] is required if the birds are being transported by another person for the hunter, or if the birds have been left for cleaning, storage (including temporary storage), shipment, or taxidermy services. The WRD [~~wildlife resource document~~] is not required of a person who lawfully killed the birds to possess the birds, or if the birds are transferred at the personal residence of the donor or donee. If the birds have been finally processed at a cold storage or processing facility and a person transports more than a legal possession limit, then a WRD [~~wildlife resource document~~] must accompany the birds in excess of the possession limit until they reach the permanent residence of the possessor. A properly executed WRD satisfies the tagging requirements of 50 CFR Part 20. Except as provided in this subsection, a WRD [~~wildlife resource document~~] shall accompany the birds until the birds reach their final destination and must contain the following information:

(1) the name, signature, address, and hunting license number of the person who killed the birds;

(2) the name of the person receiving the birds;

(3) the number and species of birds or parts;

(4) the date the birds were killed; and

(5) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(c) No person may:

(1) take or have in possession more than the bag and possession limits of each species of migratory game birds except as provided in this section;

(2) possess migratory game birds on the opening day of the season in excess of the applicable daily bag limit;

(3) possess more than one daily bag limit of freshly killed migratory game birds while in the field or while returning from the field to one's hunting camp, automobile or other motor driven land conveyance, aircraft, temporary lodging facility, personal residence, or cold storage or processing facility; or

(4) possess freshly killed migratory game birds during the closed season.

§65.313. General Rules.

(a) No person shall hunt migratory game birds except during the open season as provided herein, or at any time except during the hours as provided herein. All dates are inclusive.

(b) Shooting hours for migratory game birds are from one-half hour before sunrise to sunset, except during the special white-winged dove season. In the special white-winged dove zone during the special white-winged dove season, shooting hours are from noon to sunset.

(c) No person shall hunt migratory game birds in this state unless that person is certified in the Harvest Information Program.

(d) Every migratory game bird wounded by hunting and reduced to possession by a hunter shall be immediately killed and become a part of the daily bag limit.

(e) The provisions of 50 CFR Part 20, Subparts E, F, G, and H in effect on September 1, 2007 are adopted by reference.

(f) [~~(d)~~] The executive director may, after notifying the Chairman of the Commission, authorize any rulemaking necessary to modify the provisions of this subchapter.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 15 - 30, 2007 and November 3 - December 26, 2007 [~~September 16 - 24, 2006 and November 4, 2006 - January 3, 2007~~].

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2007 [~~September 1 - October 30, 2006.~~]

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 30, 2007 and December 26, 2007 - January 4, 2008 [~~September 1 - October 30, 2006 and December 26, 2006 - January 4, 2007~~].

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 21 - November 11, 2007 and December 26, 2007 - January 12, 2008 [~~September 22 - November 12, 2006 and December 26, 2006 - January 12, 2007~~].

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 1, 2, 8, and 9, 2007 [~~September 2, 3, 9, and 10, 2006~~].

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than four mourning doves and two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than eight mourning doves and four white-tipped doves in possession.

(B) Dates: September 21 - November 11, 2007 and December 26, 2007 - January 8, 2008 [~~September 22 - November 12, 2006 and December 26, 2006 - January 8, 2007~~].

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 15 - 30, 2007 and November 3 - December 26, 2007 [~~September 16 - 24, 2006 and November 4, 2006 - January 3, 2007~~].

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 15 - 30, 2007 [~~September 9 - 24, 2006~~].

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2007 - January 31, 2008 [~~December 18, 2006 - January 31, 2007~~]. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): November 3, 2007 - February 17, 2008 [~~November 4, 2006 - February 18, 2007~~]. The daily bag limit is eight. The possession limit is 16.

§65.318. Open Seasons and Bag and Possession Limits--Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is five, which may include no more than two scaup, two redheads, two wood ducks, and no more than one (in the aggregate) of the following: mallard hen, pintail, canvasback, or dusky duck (mottled duck, black duck, Mexican duck, or hybrid of those species). The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(A) High Plains Mallard Management Unit: October 27 - 28, 2007, and November 2, 2007 - January 27, 2008 [~~October 28 - 29, 2006, and November 3, 2006 - January 28, 2007~~].

(B) North Zone: November 3 - 25, 2007 and December 8, 2007 - January 27, 2008 [~~November 4 - 26, 2006 and December 9, 2006 - January 28, 2007~~].

(C) South Zone: November 3 - 25, 2007 and December 8, 2007 - January 27, 2008 [~~November 4 - 26, 2006 and December 9, 2006 - January 28, 2007~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: November 3, 2007 - February 5, 2008 [~~November 4, 2006 - February 6, 2007~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 3, 2007 - February 5, 2008 [~~November 4, 2006 - February 6, 2007~~]. The daily bag limit for dark geese is four, which may not include more than three Canada geese or more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: November 3, 2007 - January 27, 2008 [~~November 4, 2006 - January 28, 2007~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) white-fronted geese: November 3, 2007 - January 13, 2008 [~~November 4, 2006 - January 14, 2007~~]. The daily bag limit for white-fronted geese is two.

(II) Canada geese: November 3, 2007 - January 27, 2008 [~~November 4, 2006 - January 28, 2007~~]. The daily bag limit for Canada geese is three.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 3, 2007 - February 3, 2008 [~~November 4, 2006 - February 4, 2007~~]. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 23, 2007 - February 3, 2008 [~~November 24, 2006 - February 4, 2007~~]. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 22, 2007 - January 27, 2008 [~~December 23, 2006 - January 28, 2007~~]. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl [~~duck~~] season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 20 - 21, 2007 [~~October 21 - 22, 2006~~];

(B) North Zone: October 27 - 28, 2007 [~~October 28 - 29, 2006~~]; and

(C) South Zone: October 27 - 28, 2007 [~~October 28 - 29, 2006~~].

§65.319. Extended Falconry Season--Early Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves and white-winged doves: November 19 - December 25, 2007 [~~November 19 - December 25, 2006~~].

(2) rails and gallinules: December 27, 2007 - February 1, 2008 [~~January 4 - February 9, 2007~~].

(3) woodcock: November 24 - December 17, 2007 [~~November 24 - December 17, 2006~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds respectively, singly or in the aggregate.

§65.320. Extended Falconry Season--Late Season Species.

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 28 - February 11, 2008 [~~January 29 - February 12, 2007~~];

(C) South Duck Zone: January 28 - February 11, 2008 [~~January 29 - February 12, 2007~~].

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. Special Management Provisions.

The provisions of paragraphs (1) - (3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. The [~~In addition to the means and methods authorized in §65.310(a) of this title (relating to Means, Methods, and Special Requirements), the~~] following means and methods are lawful during the time periods set forth in paragraph (4) of this section:

(A) shotguns capable of holding more than three shells; and

(B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this section:

(A) there shall be no bag or possession limits; and

(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply; and

(C) a person may give, leave, receive, or possess legally taken light geese or their parts, provided the birds are accompanied by a wildlife resource document (WRD) from the person who killed the birds. A properly executed WRD satisfies the tagging requirements of 50 CFR Part 20. The WRD [~~wildlife resource document~~] is not required if the possessor lawfully killed the birds; the birds are transferred at the personal residence of the donor or donee; or the possessor also possesse a valid hunting license, a valid waterfowl stamp, and is HIP certified. The WRD [~~wildlife resource document~~] shall accompany the birds until the birds reach their final destination, and must contain the following information:

(i) the name, signature, address, and hunting license number of the person who killed the birds;

(ii) the name of the person receiving the birds;

(iii) the number and species of birds or parts;

(iv) the date the birds were killed; and

(v) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(3) Shooting hours. During the time periods set forth in paragraph (4) of this section, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Special Light Goose Conservation Period.

(A) From January 28 - March 30, 2008 [~~January 29 - March 25, 2007~~], the take of light geese is lawful in Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 6 - March 30, 2008 [~~February 7 - March 25, 2007~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701841
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 389-4775

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31 TAC §65.310

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The repeal affects Parks and Wildlife Code, Chapter 64.

§65.310. Means, Methods, and Special Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701840
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: June 24, 2007
For further information, please call: (512) 389-4775

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

SUBCHAPTER I. MEMORANDUM OF UNDERSTANDING

1 TAC §3.9300

The Office of the Governor, Criminal Justice Division (CJD), adopts an amendment without changes to Title 1, Texas Administrative Code, §3.9300, concerning CJD and the Department of Public Safety (DPS). The section contains the Memorandum of Understanding (MOU) pertaining to the coordination of drug law enforcement efforts between CJD and DPS. The adopted amendment was originally proposed and published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1821).

CJD received no comments to the amendment.

The amendment is adopted under Texas Government Code §411.0096, which requires CJD and DPS to enter into a MOU.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 14, 2007.

TRD-200701849
Christopher Burnett
Assistant General Counsel
Office of the Governor
Effective date: June 3, 2007
Proposal publication date: March 30, 2007
For further information, please call: (512) 463-1919

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 21. CITRUS

SUBCHAPTER A. CITRUS QUARANTINES

4 TAC §21.1, §21.8

The Texas Department of Agriculture (the department) adopts amendments to §21.1 and §21.8 concerning citrus quarantines, without changes to the proposal published in the April 6, 2007, issue of the *Texas Register* (32 TexReg 1979). The amendments are adopted to add orange jasmine (also known as orange jessamine) (including both *Murraya exotica* L. and *M. paniculata* (L.) Jack to the list of regulated articles. Orange jasmine is the preferred host of an insect, called Asian citrus psyllid, *Diaphorina citri* Kuwayama (Homoptera: Psyllidae), which spreads the bacterium that causes the citrus greening disease. Orange jasmine also has been identified as a host of citrus greening. Citrus greening is one of the most threatening diseases of citrus and has seriously affected citrus production in a number of countries. The adopted amendments will assist in keeping citrus greening disease from entering Texas.

Orange jasmine is not commonly grown in Texas; and apparently, only 3 to 4 nurseries grow a few of these plants for sale. Labeling of the orange jasmine plants would aid in enforcement of citrus quarantines to prohibit entry of plants into Texas. Growers, sellers, or distributors of orange jasmine will be required to adhere to the same labeling and recordkeeping requirements as for citrus plants. The amended labeling requirements restrict conditions under which a non-rebuttable presumption is made and will facilitate determination of whether any given orange jasmine is produced in Texas.

The adopted amendment to §21.1(6) modifies the definition of the term "regulated article" to include orange jasmine and clarifies reference language in the first paragraph of §21.1. The amendments to §21.8 define the labeling requirements necessary to track and identify regulated articles and change the terms "citrus" and "citrus plants" to "regulated articles" to make this section consistent with the changes made to §21.1 as specified in the Texas Agriculture Code, §71.009 and §71.010. An exemption is also added to clarify the department's intent that labeling requirements do not apply to a retail buyer, homeowner or end user grower.

No comments were received on the proposal.

The amendments to §21.1 and §21.8 are adopted in accordance with the Texas Agriculture Code (the Code), §73.002, which provides for the state to use all constitutional measures to protect the citrus industry from destruction by pests and diseases; §71.009, which provides the department with the authority to adopt rules as necessary for the seizure, treatment, and destruction of plants, plant products, and other substances for the effective enforcement and administration of Chapter 71, relating to general control of horticultural diseases and pests.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701839

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: May 31, 2007
Proposal publication date: April 6, 2007
For further information, please call: (512) 463-4075

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SUBCHAPTER C. CITRUS BUDWOOD CERTIFICATION PROGRAM

4 TAC §21.40

The Texas Department of Agriculture (the department) adopts amendments to §21.40, concerning the citrus budwood certification program, without changes to the proposed text as published in the April 13, 2007, issue of the *Texas Register* (32 TexReg 2077).

The amendments are adopted to remove three varieties of citrus ("Meyer" lemon, "Thorny Mexican" lime and "Thornless Mexican" lime) from the list of tree varieties that are required to use certified budwood for production. Section 19.004 of the Texas Agriculture Code states that the department and/or the Citrus Budwood Advisory Council (the council) may not require the use of certified citrus budwood until the department and the advisory council determine that an adequate supply of certified citrus budwood is available. The amendments are adopted because the council has determined that demand for the three varieties removed has increased beyond what can be met by the current supply of certified budwood. The council voted at a recent meeting to request that the department remove "Meyer" lemon, "Thorny Mexican" lime and "Thornless Mexican" lime from the list of mandatory varieties for citrus budwood. Furthermore, the amendments ensure that there is an adequate supply of citrus trees while production capacity for certified budwood of those citrus varieties is being augmented. The amendments leave requirements unchanged for other varieties currently regulated under §21.40.

No comments were received on the proposal.

The amendments to §21.40 are adopted under the Texas Agriculture Code, §19.004, which directs the department to administer the citrus budwood certification program; and §19.006, which authorizes the department with the advice of the advisory council, to adopt standards and rules necessary to administer the citrus budwood certification program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 14, 2007.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts new §25.130, relating to Advanced Metering; and amendments to §25.121, relating to Meter Requirements; §25.123, relating to Meter Readings; and §25.346, relating to Separation of Electric Utility Metering and Billing Service Costs and Activities, pursuant to Public Utility Regulatory Act (PURA) §39.107 as amended by House Bill (HB) 2129, 79th Legislature, Regular Session (2005), with changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9183). The commission adopts §25.311, relating to Competitive Metering Services, pursuant to Public Utility Regulatory Act (PURA) §39.107 as amended by HB 2129, 79th Legislature, Regular Session (2005) with no changes to the text as proposed.

The new rule and amendments will implement HB 2129, relating to advanced metering and address: 1) the importance of balancing the interests of customers, Retail Electric Providers (REPs), and electric utilities with respect to advanced metering; 2) the minimum functionality for electric utility advanced meter systems to qualify for the cost recovery surcharge; 3) the process for an electric utility to notify the commission and REPs of the deployment of advanced metering; and 4) the cost recovery surcharge for advanced metering.

This new rule and the amendments are competition rules subject to judicial review as specified in PURA §39.001(e). These amendments and new rule are adopted under Project Number 31418.

The commission received written initial and reply comments on the proposed new rule and amendments from the Alliance for Retail Markets ("ARM" members participating include Constellation NewEnergy, Inc., Direct Energy, LP, Green Mountain Energy Company, and Stream Gas & Electric Ltd. (d/b/a Stream Energy)), CPL Retail Energy, LP; Texas Energy Association for Marketers ("TEAM" members include Accent Energy; Cirro Energy; Commerce Energy, Inc.; Green Mountain Energy Company; Just Energy Texas; StarTex Power; Stream Energy), Tara Energy and WTU Retail Energy, LP, (collectively the "Coalition of Retail Marketers" or "CRM"); the Joint Distribution Service Providers ("Joint DSPs", consisting of CenterPoint Energy Houston Electric, LLC; TXU Electric Delivery Company; AEP Texas Central Company; AEP Texas North Company; Southwestern Electric Power Company; Entergy Gulf States, Inc.; El Paso Electric Company; Nueces Electric Cooperative, Inc.; and Texas-New Mexico Power Company); Elster and Hunt Technologies; the Electric Reliability Council of Texas (ERCOT); the Office of Public Utility Counsel (OPC); Public Citizen; Reliant Energy Inc.; REPower Energy; Texas Legal Services Center (TLSC) and Texas Ratepayers' Organization to Save Energy (Texas Rose); Texas Industrial Energy Consumers (TIEC); TXU Cities Steering Committee (Cities); TXU Energy Retail Company, LP.; Xcel Energy Services Inc.; and Current Communications of Texas, L.P. Reply comments on behalf of CRM and Reliant were filed jointly by the Retail Electric Provider Coalition (REP Coalition or CRM).

In the preamble of the proposal as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9183), the commission invited interested persons to comment on specific questions posed by the commission. The questions, along with the comments and the commission's responses are presented prior to a discussion of other comments on the proposed rules

The commission posed and received comments on four questions in this proceeding.

Question 1

Is there a minimum threshold of technical capability of advanced meters that should be met in order to get cost recovery through the surcharge mechanism?

Reliant, TXU Energy, and CRM stated that a minimum threshold of technical capability of advanced meters should be met in order to receive cost recovery through the surcharge mechanism.

CRM added that when the Legislature in 2005 enacted the amendments to PURA §39.107 pursuant to HB 2129, it sought to encourage the deployment of advanced meters by facilitating electric utility cost recovery by allowing utilities to impose a nonbypassable surcharge specifically dedicated to that purpose. CRM went on to state that an incentive was therefore established for utilities to deploy more sophisticated and innovative meters beyond today's norm, to the benefit of utilities, REPs, and customers alike, and that these meters are to be deployed for a variety of reasons, including: to potentially increase the reliability of the regional electrical network, encourage dynamic pricing and demand response, make better use of generation assets and transmission and generation assets, and provide more retail choices for consumers.

CRM further stated that in order for advanced meters to qualify for the surcharge, those meters should provide *all* of the benefits intended by the statute and rule, and that if an electric utility deploys new meters that do not include all of the minimum system features in the advanced metering rule or are deployed in a manner that is non-compliant with the rule, the electric utility should not be able to use the nonbypassable surcharge mechanism. CRM argued that only an electric utility in full compliance with §25.130 should be allowed to use the surcharge as a cost recovery mechanism, unless it has been granted a waiver under the rule.

CRM pointed out that meter manufacturers have announced the availability of competitively priced advanced meters that provide the functionalities at issue in this proceeding. Specifically, CRM noted that Itron, Inc., announced on November 1, 2006, that CenterPoint Energy will deploy Itron's OpenWay meters, which enable remote connections and disconnections as well as home access to meter data through an industry standard wireless protocol, ZigBee. CRM went on to state that USCL, DCSI, AMPY, ORION, and other companies recently have deployed meters with similar advanced features. CRM urged the commission to encourage all utilities to undertake the deployment of this forward-looking technology and to take advantage of the specialized cost recovery mechanism authorized by the Legislature for advanced meters in compliance with the commission's rule.

TXU Energy stated that by meeting the minimum requirements, REPs and end-use customers are assured of receiving the functionality and benefits of advanced metering systems (AMS) consistently, and can better understand the functionality and benefits. TXU Energy recommended that the benefits of standardized minimum requirements be balanced against a regulatory scheme that maximizes the opportunities for innovation. Therefore, TXU Energy proposed that minimum thresholds be limited to those that are needed to support the overall functionality and benefits of AMS. Moreover, the appropriate minimum technical requirements can reasonably change in response to technological advancements. TXU Energy therefore endorsed the inclusion of minimum standards, but urged the commission to avoid imposing a list of requirements that might stifle competitive creativity and innovation.

Joint DSPs commented that the minimum threshold of technical capability required for deployment of advanced meters for purposes of cost recovery should be the factors in proposed §25.130(g)(1) or the capabilities granted in a waiver pursuant to proposed §25.130(g)(3), and that in order to receive cost recovery through a surcharge, utilities should not be held to a higher standard of advanced meter technology than required by PURA and the adopted rule, or the capabilities approved in a waiver request. In its reply comments, Hunt and Elster agreed, stating that the very minimum should be included so as to allow flexibility to the electric utility.

Joint DSPs urged the commission to consider setting minimum standards for advanced metering such that end-use customers can benefit from the deployment of advanced metering in the most cost-efficient manner, and so that all customers do not have to pay for functionality from which only a few are likely to receive benefits.

The CRM argued that the proposed minimum standards would allow for innovative product offerings for customers, which would benefit the market substantially. Joint DSPs also added that Nueces Electric Cooperative, Inc. ("NEC") is the only electric cooperative in Texas whose distribution territory is open to competition. The Joint DSPs explained that the cost for a small electric utility like NEC to implement advanced metering and interval data processing and posting is not economically justified. Joint DSPs stated further that if Interval Data Recorder (IDR) processing as proposed in the rule were to become a requirement for electric cooperatives that choose to open their distribution areas to competition, this requirement and its accompanying costs are likely to become a significant barrier to entry for electric cooperatives considering entry into the Texas electric choice market.

Regarding the waiver of certain functionalities, TXU Energy agreed that it was a reasonable way to address features that may not be cost-effective in certain parts of electric utility service areas. TXU Energy noted that while this could inevitably lead to some customers receiving a different set of features and functionality, the proposal under which waivers would be granted ensures that the AMS functionality and benefits would be at least equivalent, even if certain features and functionality are not included.

TXU Energy added that in order to receive approval of the waiver, the electric utility should be required to disclose all evidence on which it relies for its claim that implementation would be uneconomic or technically infeasible, and to bear the burden of proof regarding whether the proposed substitute AMS "meets, exceeds, or is an adequate substitute."

In it reply comments, Current stated that minimum functional capabilities should be established for meters to qualify for cost recovery, and that such standards should encourage enhanced functionality while recognizing that such enhanced functionality may not be appropriate or justifiable for 100% of an electric util-

ity's service area. Current also urged the commission to adopt standards that are technology neutral.

The REP Coalition stated in reply comments that the minimum features set forth in a commission rule will allow a common platform upon which REPs can develop and market products to any advanced metering customer, regardless of which electric utility serves that customer. Reliant favored a requirement for minimum functionality and stated that the proposed requirements contained the basic components for mass deployment of advanced meters. Reliant stated that the minimum functionality must be met in order for an AMS to be eligible to cost recovery through the surcharge mechanism. Reliant explained further that similarity across electric utility territories will prevent REPs from offering electric utility-specific products. Reliant added that commercial customers frequently have locations across electric utility territories and require product attributes to be the same regardless of location.

Cities argued that the commission should not set minimum functionality in order to receive cost recovery. Rather than specify minimum standards in the rule that may simply contribute to higher expenditures for metering capabilities that are not cost justified, utilities should be required to provide reports concerning the existing deployed advanced meters or use pilot programs to test and demonstrate that advanced meters are "cost-justified in terms of offering tangible benefits from enhanced reliability, improved meter reading efficiency, or facilitating the development of new retail energy products that offer savings to retail customers over what could have been achieved without advanced metering." Cities expressed skepticism that advanced meters will lead to substantial savings in metering costs, and that time differentiated retail energy pricing would be offered to small customers. Cities added that minimum standards may only serve to increase investment costs of such equipment, which in turn will drive up costs to small retail consumers who already are paying very high prices for energy in the new competitive market.

In its reply comments, CRM urged the commission to consider that the substantial savings in meter reading automation alone will provide benefit to customers. CRM also contended that experience from companies that have installed advanced meters demonstrates that the ability to locate outages, identify false alarms, and monitor performance, which help to substantially increase reliability.

OPC suggested that if there are commonly accepted industry standards regarding a minimum threshold of technical capability and if such a standard is approved by independent organizations charged with quality control and evaluation in the advanced metering industry, it may be acceptable to obtain cost recovery through surcharge. OPC cautioned that the rule should provide some protections to customer classes, especially those in poorer areas so the electric utility does not deploy advanced meters that unreasonably exceed the technical capabilities necessary to deliver, monitor, and provision electric products for ratepayers. OPC added that a customer may not need the "Hummer" of advanced meters where a "Civic" will reasonably suffice. OPC also stated that the minimum functions should be narrowly targeted to the customer classes and regions.

Conversely, Hunt and Elster asserted that there is a considerable difference from state to state, utility to utility, and technology company to technology company, as to what they believe are rational, objective, technological capabilities that could be labeled as a "minimum threshold." Hunt and Elster explained that the COMET Working Group process at ERCOT included discussions, before the formal comment period for the strawman in this docket, of what should be accepted as a "smart or advanced meter" and what should be the capabilities of an advanced metering infrastructure (AMI). Hunt and Elster argued that the advances being made across the entire metering industry will make it next to impossible for the commission to entertain a position that will satisfy all parties to this rulemaking. It added that the commission should focus on what functionality the commission would like to achieve in an AMI deployment and allow the utilities, along with the technology companies, to determine how best to fulfill those requirements. Hunt and Elster suggested that the initial list discussed in the COMET Working group provide the starting point for the commission.

Public Citizen argued that advanced meters should provide data to consumers, the REP, and the independent organization or regional transmission organization in 15-minute increments and that the information from advanced meters should be stored for a minimum of one year. Public Citizen stated that the mechanism for conveying information to the consumer must be specific and instantaneous so consumers can voluntarily control the deployment of certain electrical appliances during periods of peak demand.

Commission response

The commission concludes that a minimum threshold of technical capability of advanced meters should be met in order to receive cost recovery under the surcharge mechanism. In making its assessment of the required functionalities, the commission is balancing the interest in minimizing the costs of deployment and obtaining broad capabilities that will support higher levels of service quality, both through automation of the meter reading and data management processes and providing more information on a more timely basis to REPs, so that they can offer valuable new services to customers. The commission agrees with CRM that in order for advanced meters to qualify for the surcharge, those meters should provide *all* of the benefits intended by the statute and rule. The commission also agrees with the Joint DSPs that minimum standards should be set for customers to benefit from AMI in the most cost-efficient manner.

The provisions relating to waivers will permit the commission to address special situations, including circumstances in which robust communications networks are not expected to be available, AMS deployed prior to the adoption of the rule, and other situations. The commission believes that utilities with smaller service territories can apply for a waiver if they are unable to meet the minimum standards. The waiver provision is also important in achieving the appropriate balance of costs and benefits. In addition to special situations, the commission has included provisions to address advanced meters without remote disconnection and reconnection capability that were ordered prior to the effective date of this rule.

The commission agrees with TXU Energy that in order to receive approval of the waiver, the electric utility should be required to disclose all evidence on which it relies for its claim that implementation would be uneconomic or technically infeasible. Regarding Public Citizen's request that meter information from advanced meters be stored for a minimum of one year, the commission concludes that this issue should not be addressed in the rule. Information storage standards can be addressed in ERCOT forums such as the COMET working group. For AMS deployment in non-ERCOT areas, the utilities should determine appropriate information-storage protocols.

The commission acknowledges the recommendation from Public Citizen that 15-minute data be provided to consumers, the REP, and the independent organization or regional transmission organization. At this time, ERCOT does not require 15-minute data for settlement. Until the settlement processes are modified, electric utilities are not required to transmit that data to ERCOT. Customers will have access to real-time data provided they have an in-home display that can communicate with the advanced meter. Because many of these in-home displays have two-way communications capabilities, this also provides near-real-time access to the data to the REPs. Regarding Public Citizen's recommendation that meter data be stored for a minimum of one year, the commission believes this should be addressed in the implementation proceeding and in the ERCOT stakeholder process, and ultimately decided by the commission.

Question 2

Should the limitation in proposed §25.130(j)(8) that a customer's demand exceed at least 100 kW be eliminated in order to provide that all advanced meters within the scope of the rule would provide, simultaneous, direct, password protected, read-only access to the customer's meter through a phone line, internet or other technology? Is it acceptable to have information on a day-after basis, day of basis or instantaneous basis?

Reliant stated that the 100 kilowatt (kW) limitation should be eliminated and that all advanced meters within the scope of the rule, regardless of demand level, should allow direct access to the meter by REPs. CRM and Public Citizen agreed. TXU Energy agreed that the limitation should be eliminated if the commission determines it is necessary to have a minimum requirement for all customers. However, TXU Energy noted that it is difficult to render an opinion at this time because TXU Energy does not know how the electric utility would provide this functionality, much less how much it would cost. TXU Energy opined that the higher the cost in the tariff, the harder it is to exceed the cost-benefit hurdle of leveraging simultaneous, direct, password protected, read-only access to the customer's meter, through a phone line, internet, or other technology.

Cities and OPC stated that the limitation should be retained. Cities argued that costs and benefits of advanced metering capabilities, particularly for smaller customers, should be demonstrated before wide scale deployment of advanced meters is mandated.

Joint DSPs commented that the requirement should be deleted altogether, as deployment on a large scale is quite costly. Instead, the Joint DSPs stated, consumers, the REP, and other third party agents should only have web portal access provided by the electric utility to the advanced meter data and advanced meter functionality, which would allow the electric utility to manage data transport traffic, system security risks, meter operation and configuration, and compliance with minimal metering requirements, while meeting the REPs' need for customer data.

As for whether the data should be provided on an instantaneous, day-of or day-after basis, Reliant, CRM, and Public Citizen stated that the data should be provided instantaneously. TXU Energy also favored an instantaneous provision but was concerned about the cost. OPC also seemed to favor the instantaneous provision, as it stated that the more restrictions placed on time, the less valuable the data will be.

Current argued that "instantaneous" transfer is not physically possible; "real-time," which is within seconds, is physically possible but comes with a cost due to the bandwidth requirements on the network.

Joint DSPs stated that this rule should establish that the utilities provide hourly interval data on a day-after basis. While the Joint DSPs acknowledged that some direct load control programs may require more frequent reads, not all do, and most customers will likely not require such information any sooner than the following day. The Joint DSPs stressed that providing advanced metering data the day after it is recorded will support time of use rates, as REPs can retrieve the data to see if its customers have complied, and to see if the customer can retrieve the data to determine what its energy charges were for the previous day. Joint DSPs argued that more frequent data availability is not necessary and cost effective for all customers, and if a REP wants more frequent meter data intervals, then such information should be arranged on an account by account basis.

Hunt and Elster argued that these issues should be decided by an ERCOT working group.

Current encouraged the commission to be mindful of several principles when making this decision. Current explained that first, there will continue to be a need for higher and higher bandwidths to meet the potential of the AMS; second, not all technologies will be able to provide such capabilities nor will they be cost justified in all meters; third, the electric utility should be allowed to recover the costs as long as they are reasonably necessary; and finally, the commission should evaluate the benefits received from real-time data.

Commission response

The commission concludes that the language proposed in §25.130(j)(8) is not necessary. The commission concludes that REPs and customers should have simultaneous, direct, password-protected, read-only access to the customer's meter *data*. The commission believes that direct access to the meter data through the electric utility's web portal as well as through a gateway inside the customer's premise is sufficient. The commission believes that the benefits from this level of information are readily available from current AMS systems and that the benefits to customers and the market of such systems will exceed the costs.

As for whether or not it is acceptable to have information on a day-after basis, day-of basis or instantaneous basis, the commission concludes that as long as the meters have the capability for REPs and customers to receive meter data inside the customer's premise, that hourly interval data should be provided to the web portal on a day-after basis.

The commission recognizes that 15-minute data is not currently needed for settlement. The commission therefore concludes that 15-minute data may be offered but is not required to be provided to REPs through the TDU web portal prior to implementing changes in the ERCOT settlement process. Exact requirements for 15-minute data availability through the TDU web portal or other means shall be addressed in the implementation proceeding following adoption of this rule.

In adopting this rule, the commission is distinguishing between minimum meter capabilities, which are prescribed in subsection (g), and required functions in subsection (j). The required capabilities in subsection (g) may require REPs or customers to deploy complementary equipment to take advantage of the capabilities, or the capabilities may be required now in the expectation that the market will evolve rapidly to take advantage of them.

The required functions in subsection (j), on the other hand, are functions that the meters must provide, when they are deployed.

Question 3

Regarding §25.130(k)(3), is the weighted-average cost of capital (WACC) the appropriate interest rate to use in setting the surcharge? If not, what rate should be used and how should it be established?

Cities, OPC, and TIEC stated that the WACC is not appropriate for setting the return component of advanced metering surcharges. Cities and OPC recommended stated that the cost of capital applied to competitive transition charges under §25.263(1)(3)(A)(i) and (ii) provides a more appropriate interest rate for determining the return component of advanced metering surcharges.

OPC argued that the WACC would be the correct interest rate if the cost of the meters were considered in a rate case where both the benefits and costs to the electric utility are considered, but in the absence of that condition, the use of WACC is piecemeal ratemaking. OPC stated that §25.130(k)(3) addresses one drawback of using the WACC by changing the interest rate each time the WACC is adjusted.

TIEC stated that use of the WACC will over-compensate utilities for a voluntary investment for which they are guaranteed recovery, and that investment in AMS is distinguishable from traditional "wires and poles" investment because it will be recovered through a nonbypassable surcharge. TIEC stated that, arguably, the use of the WACC to establish carrying costs in the past reflected a perception that there was a higher risk associated with the financing of long-term assets for which recovery was not always certain, but that the establishment of a nonbypassable charge, however, lowers this risk and creates little cash flow uncertainty for the electric utility.

In reply comments, TIEC stated that the AMS assets are unique and need not be supported with a traditional capital structure, and it may be appropriate for these assets to be financed with debt. TIEC also stated that because the legislature provided the utilities with a specific recovery method that limits the risk of under-recovery, these assets need not necessarily be financed with the typical mixture of debt and equity. Thus, the cost of debt calculation that was set forth in the commission staff strawman is the appropriate interest rate to use in setting the surcharge. This rate reflects the lower risk associated with AMS recovery.

Conversely, TXU Energy, Reliant, and Joint DSPs stated that the WACC was the appropriate interest rate to use in setting the surcharge.

Joint DSPs stated that the WACC from the electric utility's last rate case is the appropriate interest rate to use in establishing the surcharge. The Joint DSPs explained that an adequate return on invested capital, including an adequate return on equity, is imperative to an electric utility's ability to attract the capital necessary to fund the deployment of advanced metering. Joint DSPs also stated that the deployment of advanced metering will require a substantial amount of capital to be invested over a relatively short period of time, which will be financed with both debt and equity. Therefore, it is reasonable that the return on investment allow a proper return on both debt and equity, not just debt. Joint DSPs went on to state that if only a debt-like return is allowed for investment in advanced metering, utilities would have an incentive to invest their limited capital dollars in other projects (transmission projects, for instance) where they could earn a full return on that investment.

Reliant submitted that because the costs included in the surcharge must be reduced by operational savings realized from deployment, it had no objection to using the WACC in setting the surcharge. Hunt & Elster agreed with Reliant that the carrying cost should only be applied to the unamortized balance, net of operating cost savings.

Hunt and Elster added that while the commission has crafted a set of cost recovery rules for deployment of AMI at §25.130(k), "we think that the commission may wish to include more specific calculation rules which would make determination of the surcharge piece easier to calculate whenever an electric utility chooses to invest in smart metering."

CRM argued that the rule should not require that the most recent commission-approved WACC for an electric utility be used. CRM explained that depending on when the commission last established a particular electric utility's WACC, such a rate may not reflect the current cost of electric utility investment today and may unduly inflate the surcharge. CRM further stated that the commission should have the discretion to conduct a review of the individual electric utility's current cost of capital and establish a new WACC in each individual surcharge proceeding, if it determines that the electric utility's most recently authorized WACC would not properly reflect the electric utility's current cost of capital.

Commission response

The commission agrees that the WACC is the appropriate interest rate in setting the surcharge mechanism. It would not be appropriate, in light of the enactment of HB 2129, to make AMS systems a less favored investment for utilities than other investments that will earn a WACC rate of return. The commission believes that HB 2129 established an incentive for utilities to implement advanced metering, and that the WACC from the most recent rate case is the appropriate incentive to accomplish that objective. The commission concurs with CRM that the commission should have the discretion to review an electric utility's current cost of capital for use in a surcharge proceeding, and may establish a new WACC if it has not approved a WACC for the electric utility within the last four years.

Question 4

Should the commission approve an electric utility's initial deployment plan prior to an electric utility's deployment of AMS?

Reliant, CRM, and the Cities agreed that a deployment plan should be approved by the commission.

Conversely, TXU Energy argued that the commission should not have to pre-approve an electric's initial deployment plan prior to deployment of AMS. TXU Energy stated that it would be sufficient to have a process that includes the filing of an affidavit by the TDU stating that the electric utility's initial deployment plan complies with the minimum requirements of the advanced metering rule, allowing any REP that executes a non-disclosure agreement with the TDU to review the deployment plan during normal business hours, and having the electric utility provide accurate, monthly status reports regarding the AMS deployment.

The Joint DSPs argued that because the advanced metering rule will include a minimum set of requirements that must be deployed, and PURA §39.107 limits deployment to a minimum of a three-year period, a mandatory commission-approved deploy-

ment plan prior to deployment is not necessary. However, the TDUs should be allowed the option to seek pre-approval at their discretion. The Joint DSPs stated that due to the level of investment that is required to deploy advanced metering, a TDU may wish to obtain regulatory certainty of recovery of the investment prior to making the investment. The optional pre-approval should include a review of the reasonableness of the chosen technologies.

Reliant expressed concern that the process envisioned in the rule lacked a meaningful opportunity for input by REPs or for review by the commission. It suggested the rule could benefit from a more specific, more streamlined approach to notifying all parties concerned of relevant deployment information. Reliant recommended a three-step process. First the electric utility would file its plan with the commission, followed by a period of public comment. The commission would approve or not approve the plan. Any modifications to the plan would be submitted in step two. Upon deployment, Reliant proposed, the electric utility would provide progress reports, at least monthly, and a list of ESI IDs with AMS deployed to all REPs operating in its service area. In order for all interested parties to adequately evaluate the plan, information and expected savings must also be included. Reliant also recommended deletion of the requirement for the TDUs to report "the number of times customer data was accessed by customers or customers' designated agents or REPs."

CRM, in its reply comments, agreed with TXU Energy's recommendation that available information regarding areas of scheduled deployment be included in the deployment plans and progress reports.

CRM argued that there should be an opportunity to provide meaningful input into the design and development of the technology, the timeline for deployment, the cost of deployment, and any other matter germane to the initial deployment plan in a formal manner, i.e., in a commission proceeding. CRM stated that informal one-on-one communications between the electric utility and REPs will not guarantee that legitimate REP concerns are considered by the electric utility and acted upon satisfactorily.

CRM was also concerned that code of conduct issues may arise from lack of review of the deployment plan and stated that there is nothing that would prevent an electric utility from installing its AMS initially in geographic areas, or solely in geographic areas, that are primarily served by its affiliated REP (AREP), thereby leaving competitive REPs that have less of a market presence in the geographic area at a disadvantage. In these circumstances, the AREP would have what amounts to a "test market" to develop various products and services related to AMS. Second, CRM noted that an electric utility could design its database and communications protocols in a manner that is preferential to its affiliate or another REP, placing other REPs at a competitive disadvantage.

CRM clarified that while it supports the concept of commission review and approval of the deployment plan, the process should not unreasonably delay deployment. Therefore, an abbreviated procedural schedule that nevertheless affords interested parties sufficient time to review and provide input about the initial deployment plan should be used for any such proceeding.

Cities commented that if initial deployment is conducted through the two-year pilot program advocated by Cities, and is therefore limited to an initial participation level of 15% of eligible customers, it would be reasonable to allow utilities to proceed with deployment before their initial deployment plan is finally approved.

OPC proposed that the information contained in a deployment plan pursuant to proposed §25.130(d) be specific, especially as to the type and features of the advanced meters proposed to be deployed. Moreover, stated OPC, such plans should be filed with the commission and subject to some type of review by the commission in the event that opposition to the plan is lodged by a party. OPC did not find the filing of a notice of deployment under the current rule to be sufficient.

TIEC added that customers will ultimately be paying the surcharge associated with the deployment of AMS and should therefore have access to the electric utility's plan. This is especially important in areas not currently subject to competition where REPs do not operate.

Hunt and Elster argued that approval of the deployment plan should not be mandatory. If the electric utility requests review of its deployment plans, the commission should conduct a review.

Commission response

The commission concludes that an electric utility should have the option to either file a Notice of Deployment or file a request for approval of its Deployment Plan. The commission agrees with Reliant that the rule could benefit from a more specific, more streamlined approach to notifying all parties concerned of relevant deployment information. The commission is adopting a three-step process for an electric utility to receive cost recovery under the surcharge that is similar to Reliant's recommendation. REPs and customers have an interest in the details of the deployment plans, and there are competitive concerns that may need to be reviewed in connection with a deployment plan. On the other hand, quick approval is also appropriate for utilities that seek approval of a deployment plan. The commission concludes that the Cities' proposal for a pilot program is not necessary and would unduly delay the improvements to metering service and the competitive retail market that advanced meters can bring.

General Comments

Xcel Energy stated that SPS is a member of the Southwest Power Pool ("SPP"), a regional transmission organization and reliability council, which is entirely outside of ERCOT. Senate Bill 7 added Chapter 39 to the PURA. Included in Chapter 39 is Subchapter I, Provisions for Certain Non-ERCOT Utilities, which applies specifically to SPS. Subchapter I recognized that transmission constraints and market power concerns in the Texas Panhandle required a more structured schedule to opening the SPS service territory to retail customer choice. Xcel went on to state that in 2001, HB 1692 amended Subchapter I to delay competition in the Texas Panhandle until at least January 1, 2007, when SPS may choose to participate in customer choice. Until SPS is authorized to move forward with retail open access, SPS is exempt from the requirements of Chapter 39, with the exception of §39.904, Goal for Renewable Energy and provisions relating to obtaining permits from the Texas Natural Resource Conservation Commission for generating facilities and reduction of emissions from generating facilities.

Therefore, Xcel Energy requested that §25.130(b) Applicability, be revised to reflect that SPS is not subject to the statutory provisions relating to advanced metering, pursuant to PURA §39.402(a). Even though the new rule provides that the deployment and use of advanced metering systems is voluntary, Xcel Energy believes that the applicability provision should more ac-

curately identify the entities that are exempt from certain provisions of Chapter 39 of PURA. Excel also added that it has no plans to implement advanced metering in Texas at this time, but does have a pilot underway in Colorado.

Commission response

The commission does not agree with the Xcel's suggestion for an exemption. This rule is voluntary, and therefore Xcel is not required by this rule to implement advanced metering.

Cities urged that the implementation of advanced metering be handled in a deliberate manner that ensures that benefits of advanced metering, particularly to smaller consumers, are demonstrated before wide scale deployment of advanced metering is allowed to proceed. Cities argued that there is no "industry evidence that would suggest that advanced metering would produce a dramatic improvement in system reliability or cost savings to retail consumers." Because of this, Cities stated that it would be unreasonable to rush the implementation of advanced metering before the benefits of such metering to Texas retail consumers can be addressed through pilot program results. Cities preferred that the commission require a mandatory two-year pilot program with a specified initial participation limit of 15% of eligible customers, to provide the experience necessary for the commission to determine if wider deployment of advanced metering is beneficial.

Cities alternately urged that each utility that currently has deployed advanced meters be required to provide a report concerning the costs of deployment, any cost savings due to deployment and benefits to each customer class, prior to full scale deployment of advanced meters. TLSC and Texas Rose agreed with the Cities that the commission should conduct an actual study of the potential costs and benefits to customers, as required by the Legislature, prior to any wide scale deployment.

Commission response

While the commission is in agreement with the Cities that implementation of advanced metering be handled in a deliberate manner that ensures that benefits of advanced metering, particularly to smaller consumers, it does not agree that there is a lack of evidence demonstrating the benefits of advanced metering. The commission is not "rushing" the implementation of advanced metering, but is adopting a three-step process that an electric utility shall follow in its deployment. This process includes opportunity for an examination of the costs and benefits to customers, REPs and the TDUs.

The commission does not agree with TLSC, Texas Rose and the Cities that the commission should conduct a study of the potential costs and benefits to customers, prior to any electric utility's wide scale deployment. HB 2129 does not mandate that an electric utility wait until the commission conduct such a study.

TLSC and Texas Rose argued that residential and low income customers might not benefit from AMI deployment and variable pricing offered by REPs, which could endanger health and safety. They added that a study would also enable the commission to study if the benefits will outweigh the costs, as well as other customer-related issues such as savings to customers, and customer protection. TLSC and Texas Rose added that deployment of advanced meters will "entail a wholesale change in the way the industry performs the metering function ... in many ways represents a brave new world that will be less friendly and less forgiving to customers." Further, TLSC and Texas Rose stated that the customer protection rules as currently written are based on an industry model that will no longer exist once advanced metering systems are widely deployed. TLSC and Texas Rose commented that this rulemaking should focus on what additional customer safeguards will be necessary to ensure that the new model does not erode current customer protections or cause other harmful consequences that have not been anticipated.

Commission response

The commission disagrees with TLSC and Texas Rose that residential and low income customers may not benefit from AMI deployment and variable pricing offered by REPs. On the contrary, the commission believes that these customers stand to benefit the most from this new technology. This technology will allow a REP to provide additional consumption information and specific products, including prepayment and time of use which will allow customers to better manage their energy usage.

OPC also requested a specific cost benefit study be undertaken by the commission as noted by TXU Cities. OPC also noted the report published by the commission on advanced metering for the Texas Legislature in accordance with HB 2129. OPC stated that the report draws many conclusions but "provides little empirical evidence regarding the relative costs associated with deployment of advanced meters." OPC opined that this report opines on the assumed benefits associated with advanced meters and, while OPC agreed that there may be some benefits with such deployment, the costs to consumers should be more readily quantified in order to determine if widespread use of this technology is warranted and the cost should be borne by customers, especially those in impoverished areas. OPC noted that this may involve studies of pilot programs in other areas or possibly such a program in Texas involving a representative sampling of each customer class to determine more accurate results. OPC contended that the information provided to date does not provide enough justification for wide-scale deployment as to electric service delivery, variety of offerings and potential cost and surcharges to ratepayers.

OPC added that the rule should require that an electric utility or TDU identify all anticipated costs of deploying advanced meters. Investments should be made only when the benefits will exceed the costs and only after the technology is thoroughly tested and proven reliable, and any rule should be written to ensure that outcome. OPC stated that low-income customers should not be subsidizing the installation of advanced meters for upper income customers. OPC continued that the current system provides a safety net, whether intended or not, to guard against shutting off service when it is dangerous to the customer, such as if a member of the household is seriously ill, elderly, disabled, or on life support. OPC urged the commission to take steps to build other safety nets into the process to warn of impending disconnections and prevent erroneous disconnections. Consumers need rules that would only allow disconnections to occur during certain hours of the day such as regular business hours.

Commission response

The commission will address OPC's concerns regarding rules for remote disconnections in a separate proceeding.

Also, OPC argued that any rule adopted by the commission must establish security standards to ensure that remote access to meters is limited to the personnel who operate the system. Any need for open standards should take a back seat to securing remote access to the meter.

Commission response

The commission believes that OPC's concerns regarding security are addressed in the minimum functionality and security audit requirements of this rule.

REPower pointed out that it currently provides prepay electricity services by installing, operating and managing load-side meters and meter related equipment at customer premises, and asked that this rulemaking not prevent this type of market innovation from moving forward.

Commission response

This rule as adopted would not prevent the type of prepayment services offered by REPower.

TIEC supported the proposed rule's provisions regarding surcharge recovery. This subsection appropriately recognizes that certain customers are required by the ERCOT protocols to have an IDR meter, which currently includes all customers above 700 kW.

Joint DSPs stated that there are several overriding issues that should be addressed by the commission in adopting a rule for the deployment of advanced metering. First, an electric utility should not be directly involved in load control or demand response programs. Those programs are more appropriately provided by energy efficiency providers or REPs using communications technologies available to those providers and their customers to control the customer's equipment. Joint DSPs added that for an unbundled electric utility to engage in those programs constitutes a competitive energy service.

Commission response

This commission agrees with Joint DSPs that for a TDU to provide these products to customers is a violation of competitive energy service rules.

The commission further disagrees that use of the functions provided by a TDU meter by the REP, or customer, is a violation of the competitive energy service rules.

Second, Joint DSPs opposed mandatory direct access to the advanced meter by anyone other than the electric utility and its authorized agents. Rather, customers, their REPs, and authorized agents should be allowed to retrieve the relevant usage data from a web portal to be provided by the TDU. In their view, allowing millions of customers, their REPs, and agents direct access to the customers' advanced meters will not only require much more expensive advanced meters, but will introduce a variety of security concerns and serious data integrity issues.

The DSPs further commented that providing customers and REPs access to a customer's data through a web portal follows the consensus recommendation from the ERCOT market participants involved in the Competitive Metering Working Group ("COMET") meetings. Joint DSPs noted that the working group discussed providing direct access to the advanced meter and reached consensus that the market preference was access to meter data, not the advanced meter itself.

Joint DSPs also commented that minimum functionality required of all advanced meters should not be set so high that deployment becomes cost-prohibitive or virtually impossible to meet. A minimum standard that is set too high will have the effect of impeding the deployment of advanced metering rather than, as intended by the Legislature, encouraging the deployment of advanced metering.

The Joint DSPs argued that certain activities in the proposed rule constitute Competitive Energy Services as defined in §25.341. TDUs are prohibited by §25.342 and §25.343 and PURA from providing Competitive Energy Services. The Competitive Energy Services rules, and PURA, will have to be modified in order for a TDU to be allowed to provide such service. Joint DSPs added that these modifications cannot be made in this proceeding, as a properly-noticed proceeding relating to the specific Competitive Energy Services rules must be established to make changes to those rules. Should those changes be made, limitations of liability will have to be established to protect the TDUs from potential monetary damages due to equipment or communications failures that occur when the TDU is performing these activities on behalf of the REPs.

Commission response

The commission does not concur with the Joint DSPs that functions required in this rule constitute competitive energy services. The competitive energy services rule was adopted at a time when many of the AMS features studied in this rulemaking were considered appropriate for competitive metering. Since the state policy has changed regarding competitive metering, any functionality of the AMS that the electric utility must comply with as a result of this rule supersedes any conflicting limitation in the competitive energy services rule.

Lastly, Joint DSPs stated that an adequate return on advanced metering investment (including an adequate equity-related return) is imperative to encouraging TDUs to invest significant amounts to deploy advanced metering in their service territories.

Reliant suggested, and in reply comments TIEC disagreed that this proceeding is the appropriate vehicle for the commission's consideration of net metering as it applies to certain retail customers. TIEC also noted that it does not agree with identifying net metering as a "discretionary service."

Commission response

The commission disagrees with parties that assert further study is needed before broad deployment occurs. The commission disagrees with the Cities that there is a lack of evidence regarding the benefits of advanced metering. The utilities that are undertaking advanced metering deployment currently began with pilots in their territories, for purposes of testing and to gather results before moving to full deployment. Further, the commission believes the language in HB 2129 assumes the benefits of advanced metering, and authorizes a surcharge. The commission also believes that the Cities' concerns regarding savings will be addressed in the surcharge proceeding. While the commission has not undertaken an extensive advanced metering study, sufficient information has been provided by parties in this docket that suggests that the advanced meters will provide savings on metering expenses, foster new service offerings, and improve service, such as providing more timely connection and disconnection. This information supports its conclusion that AMS deployment will be beneficial for both competitive and non-competitive areas in Texas. The commission agrees with TIEC that this proceeding is not the appropriate forum to decide whether net metering should be a discretionary service.

Comments for §25.121, Meter Requirements

Reliant agreed with the proposed amendments to §25.121.

REPower stated that §25.121(b) should specifically allow property owners, customers or customers' agents (which may be REPs) to install load-side meters and equipment, and com-

mented that while the TDU meter data would be the basis for REPower to purchase electricity, customer consumption would be measured by the load-side meter. Joint DSPs replied that load-side meters should not be used for billing, as they would not always provide the same reading as the TDU supplied meter.

Commission response

The commission believes that the rule does not preclude load-side meters to be installed, and for this reason, it is not amending the rule to address REPower's concerns. The commission notes that REPower currently installs load-side meters to deliver and manage prepaid services and no actual billing is being conducted based on the load-side meter data, but the meters are being used to register customers' consumption under REPower's prepayment plan. The commission agrees with Joint DSPs to the extent that the TDU supplied meter data must be the basis for wholesale settlement.

§25.121(d)(4)

REPower opined that "customer" in subsection (d)(4) should include the property owner, management company, or landlord of a multi-family property.

Commission response

The commission does not agree with REPower that, for this subsection "customer" should include the owner or manager of the property. Customers have rights to meter data and to protect it from release to others. The REPower proposal is inconsistent with these rights.

§25.121(d)(5)

TXU Energy commented that the added subsection (d)(5), relating to conflicts between this section and §25.214 (and the tariff adopted under that section), should be deleted, with the same language added as a new §25.121(f). Conversely, CRM took the position that it is preferable for rule language supersede tariff language, and absent a better understanding of its implications for the tariff, this subsection should be deleted altogether.

Commission response

The commission disagrees with TXU Energy and agrees with CRM. Subsection (d)(5) should not be deleted.

§25.121(f)

Joint DSPs stated that subsection (f) should be deleted, as it addresses the use of proprietary customer information and is therefore inappropriate to a rule on "Metering Requirements." Instead, Joint DSPs stated that §25.272(g)(1) was the appropriate place for changes to customer protection rules.

Commission response

The commission disagrees with the Joint DSPs that subsection (f) be deleted.

REPower commented that metering rules for REP owned meters should be similar to those for TDU owned standard meters. It also proposed a new subsection (f) that would make REP owned load-side meters exempt from the additional requirements for advanced meters set forth in this section and in §25.130.

Commission response

The commission concurs with REPower that rules for REP owned meters should be similar to those for TDU owned standard meters. However, the commission rejects the recommendation that a new subsection be added that would make REP owned load-side meters exempt from additional requirements for advanced meters. This rule, as proposed, does not apply to meters other than electric utility meters, so the change in the rule recommended by REPower is unnecessary.

Comments for §25.123, Meter Readings

Reliant was in agreement with all proposed amendments to this section.

TXU Energy commented that the term "display" should be added in subsection (a) to clarify that advanced meters will show units and quantities, expressed in kWh, which are the basis for electric utility charges to the REP, as distinct from the basis on which the REP is billing the customer.

Xcel Energy stated that the amended language in subsection (b) is too broad, and might be interpreted to mean that if meter reading schedules had to be altered due to extreme weather, the customer would have to be notified of the change. It suggested that the language be altered to indicate that customer notification would be required if the meter reading cycle would be altered for more than three cycles or if the reading cycle changes were a result of the customer moving to an advanced metering program. In this same subsection, CRM stated that notification of changes in meter reading frequency should be made to the customer's REP rather than to the customer. TXU Energy stated that because it is not a defined term, "standard" should be added to the text of the subsection, and that language should be added to indicate that subsection (b) is not intended to apply to advanced meters.

Xcel commented regarding customer read programs in subsection (c) that the increase in frequency of electric utility reads from once every twelve months to once every six months was acceptable as long as the commission understood the need for some flexibility with regard to specific schedules.

CRM proposed adding a new subsection, designated "(c)" which would stipulate that reading intervals for advanced meters would be governed by Applicable Legal Authorities, anticipating that ERCOT would develop profiles appropriate for new service offerings by REPs.

Commission response

The commission agrees with the new subsection suggested by CRM. The commission also agrees with Xcel comments concerning the need for flexibility with regard to specific reading schedules. The commission agrees with TXU Energy that the term "display" should be added in subsection (a), and that the term "standard" be added to the text of subsection (b), and has made the changes accordingly. The commission concurs with Xcel comments relating to customer notification.

Comments for §25.130

§25.130(a)

Joint DSPs believed that the statement of the purposes should be reworded to conform to the legislation that encouraged the deployment of advanced meters and authorized the advanced metering surcharge.

Public Citizen suggested that this subsection refer to the ability of customers to lower their energy costs and have accurate information on energy at the time of use.

Reliant stated that the purposes of this section should be to authorize electric utilities to assess a nonbypassable surcharge to

recover costs incurred for deploying advanced metering systems that are consistent with this section to increase the reliability of the regional electrical network, to encourage the deployment of metering technology necessary for retail electric providers to offer dynamic pricing and demand response products to enhance the efficiency of the deployment and operation of generation, transmission and distribution assets, and to facilitate the ability of retail electric providers (REPs) to offer additional products and more choices to electric customers.

REPower proposed to add a statement that this section would not preclude a REP from installing load-side meters and meter related equipment upon customer request.

Cities recommended that the statement of purposes be modified to make clear that the intent is to encourage advanced metering deployment in instances in which it can be demonstrated that such systems are cost effective and beneficial to consumers, and to authorize surcharge of costs of such advanced meters in instances wherein such benefits are demonstrated.

Commission response

The commission agrees with the Joint DSPs that the statement of the purposes should be reworded to conform to the legislation that encouraged the deployment of advanced meters and authorized the advanced metering surcharge, and has made changes to reflect this. The commission also believes that nothing in this rule will preclude a REP such as REPower from installing load-side meters and meter related equipment upon customer request, but that this rule need not specifically permit such meters to be installed. The commission agrees with the suggestion to refer to the customers' ability to lower their energy costs and have more accurate information on energy at the time of use. The commission agrees with Reliant and has made changes accordingly. The commission does not entirely agree with the Cities. The information presented in this proceeding suggests that advanced meters can provide enhancements in meter reading and data management to utilities, and that requiring modest additional investment in meters will provide more and more timely consumption information to customers and REPs, which will allow REPs to deploy products and services that will permit customers to better control their consumption of electricity. The commission concludes that there has been adequate exploration of the costs of advanced meters in this proceeding to support the rule that it is adopting, and that there is no need for further exploration of the issue through pilot projects.

§25.130(b)

Xcel Energy requested that this section be revised to reflect that SPS is also exempt pursuant to PURA §39.402(a).

Commission response

The commission does not agree with Xcel regarding the exemption. This rule does not require the deployment of advanced metering. Further, the commission believes that deployment has the potential to benefit all customers in Texas, inside and outside of ERCOT, and it may be appropriate at some future time to investigate whether particular utilities should be required to deploy advanced meters.

§25.130(c)(2)

Joint DSPs requested that the proposed language defining "Advanced Metering System" be amended. The term "communication devices" should be changed to "communications system" which is broader and will apply to all communication equipment that will need to be installed for implementation of advanced metering.

CRM recommended that the definition of "dynamic pricing" in subsection (c)(3) be clarified to narrow the relevant time period. CRM also recommended adding a definition of non-standard advanced meter, which would be a meter that contains features and functions in addition to the AMS features in the deployment plan approved by the commission.

Commission response

The commission agrees with the Joint DSPs suggested change to this subsection and also with CRMs proposed definitions and makes changes to the rule in accordance with these recommendations.

§25.130(d)(1)

Joint DSPs stated that the first sentence should be amended to delete the reference to "unless otherwise ordered by the commission." Joint DSPs believe that because deployment of advanced meters is voluntary under PURA, the commission lacks the authority to "order" deployment of advanced meters.

Cities suggested that this subsection be modified to provide that electric utilities' advanced metering deployment plans should be made available for review by both REPs and end use customers.

The Joint DSPs argued that no advanced metering system that has been deployed prior to the adoption of this rule should be required to obtain a waiver from the requirements of the rule. The Joint DSPs believed that to attempt to apply the rule to deployments that are already in progress would be unfair and contrary to the Legislature's desire to encourage, not impede, the deployment of AMS.

CRM recommended that the second sentence of subsection (d)(1) be clarified as to whether this is an automatic exception to the requirements of the rule for certain AMS deployments, without the need for commission review or whether it intended to provide another basis for requesting a waiver. CRM stated that it does not support an automatic wholesale exception for an electric utility's entire AMS because the deployment began before the effective date of the rule.

Commission response

The commission does not agree with the Joint DSPs that deployment of advanced meters is voluntary under PURA or that the commission lacks the authority to "order" deployment of advanced meters. There may be circumstances in which it would be appropriate for the commission to order a electric utility that has not deployed advanced meters to do so, and, for this reason, it is not making the changes recommended by Joint DSPs. The commission disagrees with the Joint DSPs that no advanced metering system that has been deployed prior to the adoption of this rule should be required to obtain a waiver from the requirements of the rule. While the legislature sought to encourage advanced metering deployment, the commission believes in order for an electric utility to receive cost-recovery under the surcharge in this rule, the functionality set out in §25.130(g) must be met or a waiver must be granted.

The commission agrees with CRM that an automatic wholesale exemption for an AMS deployed prior to the effective date of the rule is not appropriate. The commission also concurs with the Cities that an electric utility's deployment plan must be available to REPs and customers for review.

§25.130(d)(2)

Joint DSPs stated in their Initial and Reply Comments that TDUs should have the ability to choose between requesting pre-approval of a deployment plan and providing notice to the commission of advanced metering deployment.

Joint DSPs also recommended that the rule include a 90-day deadline on commission action in a request for approval of a deployment plan that a TDU submits. Joint DSPs also requested the removal of the requirement for the TDU to notify customers of the deployment plans.

TXU Energy proposed various amendments to §25.130(d)(2) intended to clarify the deployment process. Specifically, TXU Energy stated that it does not believe the electric utility should necessarily be responsible for notifying the customer of advanced meter deployment and associated features, and the expected costs of deployment, and that communication with the end-use customer is the duty of the REPs. TXU Energy also requested that available information regarding areas of scheduled deployment be included in the deployment plans and progress reports and that as much geographic or other information as possible be included in the deployment plans and progress reports. TXU Energy also suggested that the language be clarified to require that the detailed deployment plan be made available in Texas since some utilities may have offices outside of the state.

CRM proposed modifications to this subsection to require commission approval of the electric utility's initial deployment plan prior to the deployment. CRM also recommended that the deployment plan be made available in the electric utility's Austin office.

Current Communications of Texas, L.P. urged the commission to reject comments that requested mandatory approval prior to deployment. Current also urged the commission to reject the request for a cost benefit analysis of pilot programs.

Commission response

The commission agrees with the Joint DSPs that TDUs should have the ability to choose between requesting pre-approval of a deployment plan and providing notice to the commission of advanced metering deployment. The commission agrees with Current's recommendation that mandatory approval prior to deployment is not required. The commission concurs with the Joint DSPs that the electric utility shall not have to notify customers of its deployment plans, but shall notify REPs. The commission disagrees with the Joint DSPs request for a 90-day deadline for commission action for approval of a deployment plan. Rather, the commission will have an expedited proceeding. The commission also agrees with Current that a cost benefit analysis of pilot programs is not necessary.

The commission agrees with CRM that the deployment plan should be made available at an electric utility's Austin office.

The commission concurs with TXU Energy that the TDU is not responsible for notifying the customer of advanced meter deployment; this communication is the duty of the REPs.

§25.130(d)(3)

CRM suggested that this subsection be modified to prohibit a deployment of advanced meters that is unreasonably prejudicial or preferential.

Commission response

The commission agrees with the suggested language by CRM and has made changes in accordance with this recommendation.

§25.130(d)(4)

Joint DSPs propose that this subsection be amended to require reporting only the number of times that the web portal is accessed.

The Joint DSPs stated that monthly progress reports would be burdensome and duplicative of the monthly report required by §25.130(d)(5). Additionally, the Joint DSPs rejected TXU Energy's proposal to include more detailed information in the reports required under §25.130(d)(2), (4), and (5) because, the Joint DSPs stated, the information is unnecessary and burdensome.

CRM recommended that this subsection be amended to require the electric utility to identify the advanced meters installed by county, zip code, and ESI ID. CRM stated that a standardization of the manner by which the utilities identify the advanced meters deployed is critical from electric utility to electric utility and that REPs need the granular information on the level of ESI ID in order to know which of their customers have advanced meters in place, so that new retail services can be marketed to those specific customers.

CRM recommended that §25.130(d)(4)(A)(v) be deleted as there is no need for that type of surveillance of customer or REP access to customer data.

Commission response

The commission agrees with CRM and Joint DSPs that there is no need for surveillance of customer data. The commission also agrees with CRM that standardization of the manner by which utilities identify the advanced meter deployment is critical for REPs. The commission notes the Joint DSPs comments pertaining to monthly progress reports and has streamlined this process accordingly.

§25.130(d)(5)

TXU Energy recommended adding TDU "feeder id" to the monthly progress reports to the extent such information is available.

CRM supported regular monthly notification of the county, zip codes, and ESI IDs associated with installed advanced meters. They also stated that depending on the speed of installation, weekly reports may be more appropriate and helpful to facilitate the retail roll-out of new products.

Commission response

The commission concludes that more frequent reports as suggested by CRM would be unduly burdensome. The commission agrees with CRM regarding monthly notification of deployment progress, as well as the recommended identifiers. Notification of deployment by ESI ID shall be mandatory, and other information such as county and zip codes is optional.

§25.130(d)(6)

Joint DSPs requested that this subsection be amended to require only approval of amendments to deployment plans that have been pre-approved by the commission. Joint DSPs recommended that the rule include a 45-day time period in which the commission must act on the request submitted by a TDU to amend the deployment plan.

Reliant fully supported the requirement for an electric utility to obtain commission approval before making any changes that would affect access to advanced metering features. Reliant offered clarifying language to that effect.

CRM recommended adding language to this subsection to address the need to provide notice to affected REPs if an AMS system is taken down for regular maintenance. CRM also recommended adding subsection (d)(7) to prevent electric utilities from providing competitive energy services relating to AMS.

Commission response

The commission agrees with Joint DSPs that amendments should only be approved for deployment plans that have been pre-approved. The commission agrees with the 45-day time period for approval. The commission accepts the language suggested by CRM for the notice requirement to REPs if the AMS is taken down for maintenance and has addressed this in the rule. The commission agrees with CRM that electric utilities should be prohibited from providing competitive energy services relating to AMS, but believes that the rule already contains this prohibition.

§25.130(e)

Hunt argued that the subsection should be amended so that an electric shall deploy only an AMS that has been already been successfully installed and tested with at least 10,000 advanced meters in North America, Canada, South America, Asia, Australia, or Europe, except for pilot programs.

Commission response

The commission does not agree with increasing the minimum requirement to 10,000 meters. Metering technology continues to change rapidly and an electric utility will need reasonable flexibility in choosing its technology.

§25.130(f)

Joint DSPs requested this subsection be amended to establish the limit for pilot programs at 10,000 meters. Hunt and Elster added that pilot programs should not need commission approval. CRM proposed to add language to ensure that all REPs that have the opportunity to participate in an AMS pilot program be able to do so to the extent practicable, as well as ensure that such a pilot program is not preferential or discriminatory with respect to the REPs that actually participate.

Commission response

The commission agrees with the Joint DSPs that the subsection should be amended to increase the limit for pilots to 10,000 meters.

§25.130(g)

Joint DSPs asked that the requirement to provide three month notice of changes to the AMS features be deleted. The time limit unnecessarily reduces the flexibility for TDUs to implement new technologies.

CRM recommended that the phase "or support" be stricken from proposed subsection (g)(1). If this language is included, potentially every meter, whether currently deployed or deployed in the future, would qualify as an advanced meter because the shell of a meter can "support" a variety of enhancements that would provide all the functionalities required by subsection (g)(1). Moreover, in order to qualify for the special cost recovery mechanism permitted under the statute and implemented pursuant to subsection (k), it is critical that all of these required minimum features must actually be functional at the time of deployment.

Commission response

The commission agrees with CRM that the phrase "or support" should be deleted and has made changes accordingly.

§25.130(g)(1)(D)

CRM also recommended that the remote disconnection and reconnection capability specified in subsection (g)(1)(D) should be included in all advanced meters. From a customer service perspective, enabling a premise to be immediately connected when a new customer establishes service without requiring a technician to visit the premises will result in better customer satisfaction. Additionally, in an instance in which a customer's electric service has been disconnected for non-payment, enabling a customer to obtain a more rapid re-connection after bill payment would be in the customer's best interest.

CRM argued further that deploying this functionality ubiquitously is likely to be more cost effective for utilities. If the cost of including this functionality is $40, but the cost of a single truck roll to connect or disconnect electric service is $100, then avoiding a single truck roll for a connect or disconnect of service is worth 2.5 meters. In a single disconnect/connect request, two truck rolls are required and several days can be required for the establishment of service.

Hunt and Elster disagreed that this should be a minimum functionality across all customer classes.

Commission response

The commission agrees with CRM that remote disconnection function provides the market with savings compared to the manner in which it is performed today. It also allows for prepayment services to be added by the REPs without having to install a second, special meter. The commission disagrees with the request by Hunt and Elster that this minimum functionality be deleted.

The commission acknowledges that meters deployed prior to enactment of this rule may not include this functionality. The commission will allow this functionality to be added on those meters previously deployed, at the request of the REP. The commission concludes that uniformity across TDU service territories is important for both REPs and customers, as is reflected in the CRM comments on a number of issues.

§25.130(g)(1)(F)

CRM recommended that the word "timely" be replaced with the phrase "direct, instantaneous, and unfettered access to" and the inclusion of the phrase "directly from the meter" in proposed subsection (g)(1)(F), consistent with its response to Question 2. CRM also recommended adding language to ensure that the advanced meter can provide customer usage data in this same manner to the customer as well as the customer's REP.

CRM also recommended that the phrase "so that the REP can monitor compliance with load management and demand response programs and protocols" in proposed subsection (g)(1)(F) be deleted in order to avoid any suggestion that these are the only uses for which direct and immediate access to a customer's usage data may be beneficial. CRM stated that this function has been demonstrated to help the customer reduce energy consumption alone, without the need for any formal demand response or load management program.

Commission response

The commission agrees with the changes recommended by CRM except that the rule uses the term real-time, rather than instantaneous.

§25.130(g)(1)

The Joint DSPs requested that this subsection be amended, because it is too specific as to the requirements for advanced metering system capabilities. Joint DSPs stated that TDUs should be allowed more flexibility to choose the vendors and the technology to be used for its advanced metering deployment. They asserted that some of the proposed requirements cannot currently be met by either the TDU or the systems at ERCOT.

Specifically, Joint DSPs stated §25.130(g)(1)(C) should be amended to clarify that all possible dynamic pricing options will not be supported as minimum system features. Section 25.130(g)(1)(D) should be amended to clarify that remote disconnection and reconnection capability will be installed at the TDU's option and only for self-contained meter applications, predominately residential and small non-residential customers.

Commission response

The commission agrees with the Joint DSPs and is not requiring that all possible dynamic pricing options be supported as a minimum system feature. The commission believes that the minimum functionality is not too specific, as current electric utility deployment appears to be consistent with meet these requirements. The commission has addressed remote disconnection above.

§25.130(g)(1)(E)

Section 25.130(g)(1)(E) should be amended to not require information to be sent to the independent organization. Instead, the information should be made available to the independent organization just as it is being made available to customers and REPs. This change would allow for TDUs to have portals installed that would not require sending data to systems, but would allow the independent organization to pull the data from the web portal.

Commission response

The commission rejects the recommendation of the Joint DSPs that information be pulled from the web portal by the independent organization. This issue shall be studied further in the commission implementation proceeding following adoption of this rule, in conjunction with the stakeholder process at ERCOT.

§25.130(g)(1)(F)

The Joint DSPs argued that §25.130(g)(1)(F) should be deleted. First, the information provided in proposed §25.130(g)(1)(H) will provide the necessary information to satisfy this requirement. Second, the provisions of demand response and load control are competitive energy services that each REP will develop and present to the market.

Commission response

The commission disagrees with the Joint DSPs that §25.130(g)(1)(F) should be deleted. The commission does concur with the Joint DSPs that offering demand response and load control products and services are the function of the REP. However, the advanced metering system significantly enhances REP's capability to offer these products and services. The commission has modified the language in this section to reflect this.

§25.130(g)(1)(G)

Joint DSPs also added that §25.130(g)(1)(G) should be deleted. CRM agreed. The provisions of demand response and load control (i.e., pricing signals) are competitive energy services that each REP will develop and present to the market. The functionality to allow different services by the REPs should be provided but not as a standard capability. CRM added that it is not necessary for a meter to provide a retail customer real-time pricing information. Rather, this functionality is more appropriate for equipment beyond the meter, such as an in-home display that is programmed to read the meter data, apply a pricing algorithm, and display the resulting information to the retail customer.

Commission response

The commission agrees with the Joint DSPs and CRM that provisions of demand response and load control are competitive energy services, and has modified the language in the rule in accordance with this.

§25.130(g)(1)(H)

Joint DSPs recommended that §25.130(g)(1)(H) should be amended. This subsection should require hourly interval data as a minimum standard. If 15 minute interval data is technically and economically feasible, then the TDU should make such data available. Hourly interval data should be the minimum requirement, and if certain customers desire 15 minute interval data in an area where it cannot be made available by the main communications technology, then those customers can pay the additional cost of providing a supplemental technology. CRM interpreted proposed subsection (g)(1)(H) to require an additional, not alternate, means by which a REP and its customer may access meter data. In other words, compliance with proposed subsection (g)(1)(H) would not eliminate the need to comply with the requirements of proposed subsection (g)(1)(F).

CRM added that a key issue in providing such access through a web portal is the question of how often the customer's data should be transmitted from the meter to the electric utility. CRM believes that transmission on a daily basis would be appropriate. CRM also recommended that the rule as adopted establish that the 15 minute interval data is a minimum capability for recording interval use, but that a meter that provides more granular usage information would be also be consistent with the commission's definition of an advanced meter.

Commission response

The commission concurs with CRM's recommendation that the rule establish that 15-minute IDR data is a minimum capability. However, the commission acknowledges that 15-minute IDR data is not necessary for settlement at this time, and therefore does not need to be currently provided through the TDU web portal. The minimum standard for data for purposes of transmitting to the web portal shall be hourly data, on a day-after basis, until such time that it becomes cost-effective to provide the data on a daily basis. Fifteen minute IDR data shall be made available on the electric utility web portal on a regular basis, to be determined during the implementation proceeding following adoption of this rule. The commission does not agree with the Joint DSPs proposed language regarding the availability and transmission of data.

§25.130(g)(1)(I)

Joint DSPs added that §25.130(g)(1)(I) and (J) should be amended to delete the reference to the specific ANSI standards. These standards refer to how data is stored within the advanced meter and communicated within an AMS. They do not refer

to how that data is actually presented to the REPs. Further, in the event that ANSI standards are changed in the future or new standards are adopted, the TDUs should be allowed the flexibility to use the most appropriate standard and best electric utility practice.

Hunt stated that the standards as set forth in ANSI relating to meters should be followed and would support general language to that effect.

Commission response

The commission disagrees with the Joint DSPs and agrees with Hunt and Elster that the reference to ANSI standards should remain in the rule. Standardization of protocols is important for cost-effective deployment of additional services by REPs in multiple service areas.

§25.130(g)(1)(J)

Hunt and Elster argued that this subsection should be deleted.

Conversely CRM recommended amending proposed subsection (g)(1)(J) to recognize that this open architecture communications standard can and should be available to more than just the electric utility. CRM added that ANSI C12.22 is the designation of a new standard that has been developed to allow the transport of ANSI C12.19 table data over communications networks of differing types. This standard was developed to allow electric utility companies a compatible secure communication protocol between ANSI meters, so they are not restricted to a single electricity meter vendor. CRM went on to point out that the benefit of this standard is that it helps ensure that these meters are able to communicate with other devices that can utilize their data, such as air conditioning controls. As a result, the language of this subsection should be revised to not unintentionally impede or restrict the use and benefits of an open standards architecture.

Commission response

The commission disagrees with Hunt and Elster that the ANSI standards for C12.22 be deleted. The commission agrees with CRM that open standards architecture benefits both the electric utility and the REPs.

§25.130(g)(1)(K)

CRM proposed an amendment to proposed subsection (g)(1)(K) to require that any decision with respect to future upgrades and add-ons to installed advanced meters be subject to input from the market, either through the ERCOT stakeholder process and/or a commission proceeding. Such a decision should not be left totally to the electric utility's discretion.

Commission response

The commission concurs with CRM that any future upgrades proposed by the electric utility can be addressed in an amendment proceeding, or through the ERCOT stakeholder process. In addition, the requirement to provide REPs notice of changes in functionality should help them understand what changes are proposed and provide opportunity to raise concerns, if they have them.

§25.130(g)(1)(L)

CRM recommended adding subsection (g)(1)(L) to the list of minimum functionality to make clear that the advanced meter is capable of communicating with multiple devices in the home, such as an energy usage display panel, air conditioner controls, prepaid mechanisms, and other devices.

Commission response

The commission concurs with CRM and has added language to the rule to address this.

§25.130(g)(2)

Joint DSPs requested that the rule not mandate the provision of pre-pay capability at the meter. CRM requested that the subsection be deleted, because it implies that the electric utility would be providing prepaid service.

Joint DSPs also stated the subsection should also be amended to clarify that the electric utility is not required to amend its tariff for discretionary services requested by REPs prior to deployment of the non-standard advanced meters or functions. Only after the electric utility and REP have agreed to deploy the nonstandard advanced meters should the electric utility be required to amend its tariff.

CRM also expressed concern about the proposed requirement in subsection (g)(2) mandating that a REP pay a fee for a report evaluating the cost and schedule for providing a nonstandard advanced meter or advanced meter feature of interest to the REP. The intent of the rule, as proposed, appears that the requesting REP would be required to pay for the report, but that any REPs that subsequently take advantage of the nonstandard advanced meter or feature would do so with no financial obligation as to the cost of the initial report. As long as the cost of such a report is not significant, this should not be a major impediment to the potential deployment of new features. Therefore, the word "reasonable" is added to describe the level of the fee. It should be cautioned that if the fee is too high, there is potential disincentive for a REP to be the first to request the investigation of a nonstandard advanced meter or feature.

The Joint DSPs also proposed that a new subsection be added to ensure that if an electric utility chooses to deploy advanced meters that have more functionality than the minimum system features established, there is not a presumption that such additional features are unreasonable. Instead, the electric utility should be allowed the flexibility to prove in the approval proceeding or a rate proceeding that the additional functions are reasonable and cost recovery should be allowed.

Commission response

The commission agrees with the Joint DSPs and CRM that prepayment capability at the meter should not be mandated in this rule. The commission agrees with the DSPs that only after the electric utility and REP have agreed to deploy the non-standard advanced meters should the electric utility be required to amend its tariff. The commission adopts the suggestion by CRM that the word reasonable be added to describe the fee for a report by the TDU for nonstandard or advanced meter features. The commission concurs with the Joint DSPs request that additional functionality deployed by an electric utility is not automatically deemed to be unreasonable, and that the electric utility will have the flexibility to prove in the surcharge proceeding that the additional functions are reasonable and necessary.

§25.130(g)(3)

Joint DSPs requested that the subsection be amended to delete the language addressing granting a waiver based on a system that meets or exceeds the minimum standards. Because the commission is establishing minimum standards, a waiver is only necessary in the event that a proposed system's standards do not satisfy the minimum standards. If an advanced metering

system meets or exceeds the established minimum standards, a waiver is not necessary because the system will necessarily comply with the minimum standards.

CRM recommended that proposed subsection (g)(3) be amended to address a waiver for the portion of AMS that was deployed prior to the effective date of the rule and cannot meet the requirements of the rule, in particular the minimum functionality requirements.

Commission response

The commission agrees with the Joint DSPs that a waiver is only necessary in the event that a proposed system's standards do not satisfy the minimum standards. The commission does not concur with CRM that an additional waiver should be added for AMS deployed prior to the effective date of the rule that fails to meet the minimum requirements. This is one of the circumstances in which a waiver may be appropriate.

However, the commission recognizes that some meters deployed prior to the adoption of this rule do not contain the remote disconnect and reconnect function. The commission will allow for cost recovery through the surcharge mechanism for those meters, provided that additional deployment contains the minimum functionality required.

§25.130(g)(5)

CRM recommended modifying proposed subsection (g)(5) to include the term "Applicable Legal Authorities" to ensure that the electric utility does not have 100 percent discretion as to the addition or enhancement of advanced metering features, and to ensure there is an avenue for stakeholder and market input into any such decisions.

Commission response

The commission agrees with CRM that the electric utility will need to receive stakeholder input prior to make major additions or enhancements to its AMS.

§25.130(h)

Joint DSPs requested that this section be deleted for various reasons. First, the costs to accomplish settlement based on 15-minute interval data will outweigh any benefits that could be achieved. The amount of data storage for the TDUs as well as for ERCOT would be cost prohibitive. As the commission is aware, ERCOT is currently working towards implementation of a Nodal market. Joint DSPs stated that a massive change to the settlement system during this same time period would endanger implementation of the Nodal market.

Joint DSPs urged that the subsection be deleted, but if retained, the language should be amended to make it clear that settlement on 15-minute interval data will only occur based on data from advanced meters that have been deployed and when the advanced metering system is capable of providing such 15-minute interval data. All other settlement data will continue to be obtained from the traditional meter data and profiles.

TXU Energy recommended that this subsection be amended to reflect that no later than 18 months from the effective date of this rule, ERCOT shall file to the Board of Directors and to the commission a summary detailing the results of a study and recommendations regarding 15-minute mass settlement. ERCOT noted in reply comments that it is willing to undertake the study suggested by TXU Energy. ERCOT highlighted that it was not clear what the scope of the study would be, and what the scope and level of detail should be included in the study. Depending on how the study scope is defined and the level of detail expected, the study could either be completed quickly or entail a significant resource commitment. If the scope is broad and great detail is expected, ERCOT added that performance of the study could affect ERCOT resource availability for other key ERCOT efforts, most notably, Texas Nodal implementation.

CRM added that while this interval may be appropriate for some customer classes or sub-classes, it may not one that the market wants ERCOT to employ in the future for all customers. Therefore, the stakeholder process at ERCOT should be used to determine whether other settlement options, in addition to a 15-minute settlement interval, should be required.

Lastly, Joint DSPs pointed out that ERCOT does not perform "retail settlement." Instead, ERCOT performs settlements of the wholesale electric market. If the subsection is not deleted, the commission should amend the rule to reference "wholesale settlement."

Commission response

The commission disagrees with the assertion by Joint DSPs that the costs to accomplish settlement based on 15-minute interval data will outweigh any benefits that could be achieved. The commission is proposing an implementation proceeding following the adoption of this rule to study the objective for 15-minute settlement at ERCOT following the transition to Nodal. The commission agrees with the Joint DSPs that until such time, settlement will continue as it is performed today.

The commission agrees that the correction needs to be made to change retail to wholesale. The commission further agrees with the Joint DSPs that 15-minute interval data will only occur based on data from advanced meters that have been deployed and when the advanced metering system is capable of providing such 15-minute interval data. The commission agrees with CRM that the stakeholder process is the best forum to examine whether other settlement options should be available.

The commission agrees with TXU Energy and ERCOT that a study in conjunction with the implementation proceeding will provide guidance for future settlement at ERCOT as advanced meters are deployed. The commission recommends that the scope of any study or cost benefit analysis provided by ERCOT be determined following the adoption of this rule.

§25.130(i)

Joint DSPs stated that standard features are established in the proposed rule; therefore, these standard features do not need to be set forth in the electric utilities' tariff. The rule should be amended to require that the non-standard discretionary charges be set forth in the tariff.

Commission response

The commission agrees with the Joint DSPs that the rule should be amended to require that the non-standard discretionary charges be set forth in the tariff.

Joint DSPs requested that this section be clarified further. Joint DSPs argued that the TDUs' tariffs addressing advanced metering charges should be uniform, so that customers and REPs can easily access the information concerning functionality of advanced meters in each service territory. Joint DSPs proposed that additional specificity be provided as to the information to be provided in the tariffs. The minimum advanced metering system features are established in the proposed rule; therefore, these

features do not need to be described in the tariff. If a TDU deploys advanced meters that contain additional standard functions, then such functions should be set forth in the surcharge tariff. Additional functions offered for a fee should be included in the Discretionary service tariff.

Commission response

The commission agrees with the Joint DSPs regarding clarification for the TDU's tariffs, and has made changes in accordance with this recommendation.

§25.130(j)(2)

CRM added that an introductory phrase should be added to subsection (j)(2) to make clear that the access provided through the web portal is in addition to the direct and instantaneous access to the meter that is required pursuant to the minimum features in subsection (g)(1).

Commission response

The commission agrees with CRM except that the access is in addition to direct and real-time access to the meter data, not the meter itself.

§25.130(j)(3)

Joint DSPs requested that this subsection be amended. The requirement to provide access to data from an advanced metering system should not apply to pilot programs, but should only apply to advanced metering systems that have actually been deployed for which the TDU is recovering the costs through the surcharge.

Commission response

The commission disagrees with the Joint DSPs that access to data should not apply to pilot programs. To the extent practicable, access to the meter data should be available to REPs participating in the pilot.

§25.130(j)(4)

CRM recommended that the independent security audit requirement in subsection (j)(4) should be deleted. Existing customer protection rules require the protection of customer data. This rule provides no new requirements or data that would be available and, consequently, no new security systems should be required. While security of customer data is essential, the costs for developing and maintaining these security systems should exist in rates today.

Commission response

The commission disagrees with CRM that an independent security audit is not necessary.

§25.130(j)(5)

CRM requested that the word "information" in proposed subsection (j)(5) be changed to "meter data" for consistency of terminology in the rule. Also, language should be added to ensure that ERCOT is not charged by the electric utility for access to this meter data, as the provision of such information should be considered an electric utility cost of doing business. Allowing the electric utility to charge ERCOT for such access will only increase the administration fee.

Commission response

The commission agrees with CRM and has made changes to reflect the phrase "meter data."

§25.130(j)(6)

CRM stated that subsection (j)(6) should be clarified such that an exception to third-party access to a customer's data if the customer has agreed in its contract with the REP not to disclose such information to an entity that is not the customer's REP. As currently worded, this proposed subsection could be interpreted to prevail over any contractual agreement entered into by the customer not to authorize third-party access.

Commission response

The commission agrees with CRM that if a customer has agreed in its contract with the REP not to disclose such information to an entity other than the customer's REP, the provision of the rule permitting the customer to disclose information does not supersede the contract. The commission concludes that it is not necessary to amend the rule to address this point, however.

§25.130(j)(7)

The Joint DSPs requested that this subsection be deleted. The subsection provides that the owner or management entity of a multifamily property shall have access to a customer's meter data for any apartment unit for the purpose of obtaining data for energy management purposes. However, PURA §39.107(b) provides that: "(a)ll meter data, including all data generated, provided, or otherwise made available, by advanced meters and meter information networks, shall belong to a customer, including data used to calculate charges for service, historical load data, and any other proprietary customer information." PURA §39.101(a)(2) provides that the commission shall ensure retail customer protections that provide a customer with "privacy of customer consumption and credit information." Joint DSPs further stated that this proposed rule provision, providing a blanket release of proprietary customer information to another entity without the customer's prior consent, is not permissible under the cited portions of PURA.

Commission response

The commission concurs with the Joint DSPs and has deleted this subsection.

§25.130(j)(8)

Joint DSPs stated that subsection (j)(8) which requires that REPs be given simultaneous, direct access to the meter for customers with a demand of 100 kW or more should be deleted. Allowing direct access raises unnecessary data integrity concerns and could greatly increase the cost of advanced metering deployment. It is sufficient for the REP, the customer, and any authorized third party to have access to the advanced meter data via the web portal, and not direct access to the advanced meter itself.

Joint DSPs added if the commission decides that REPs should be granted direct access to advanced meters, then proposed §25.130(g)(2) would allow REPs to request advanced meters with this additional functionality upon payment of the requisite additional cost. By making this functionality discretionary rather than mandatory, the cost of advanced metering deployment will be reduced, and the additional functionality will only be provided to those customers who determine that the benefits of the functionality will be worth the additional cost.

Commission response

The commission concurs with the Joint DSPs that its sufficient for the REP, the customer, and any authorized third party to have access to the advanced meter data via the web portal, as well as through the customer's home area network (HAN), and not direct

access to the advanced meter itself. The commission also adds language that clarifies that the meter will transmit usage data to the home area network (HAN).

§25.130(j)(9)

CRM recommended that subsection (j)(9) be deleted to eliminate the differential between which customers and REPs do and do not have the right to simultaneous, direct, password-protected, read-only access to the customer's meter data.

Commission response

The commission agrees with CRM's recommendation and has made changes accordingly.

§25.130(k)(1)

Joint DSPs requested that the second sentence in the subsection be deleted. Proposed §25.130(d)(2) does not require that a detailed deployment plan be filed with the commission; therefore, cost recovery should not be dependent on such a filing. The subsection should also be amended to clarify that a waiver can be obtained for advanced metering systems that were deployed prior to the rule and do not meet the minimum required standards.

CRM recommended that subsection (k)(1) be clarified regarding whether the surcharge can apply to certain customers who have advanced meters that were deployed prior to the effective date of the rule. The rule also would allow certain meters deployed prior to the effective date of the rule to be subject to cost recovery through the surcharge if a waiver is obtained. CRM recommended that, for those customers with advanced meters deployed prior to the effective date of the rule, those customers should be subject to the surcharge in the event the electric utility seeks to recover the costs of those meters through the surcharge in conjunction with a waiver from the commission.

Cities concluded that this section should be modified to qualify that cost recovery is contingent upon demonstration of consumer benefits based upon pilot program results. Furthermore, subsection (k)(1) should be amended to reflect that recoverable AMS investment amounts should be offset by the net value of meters that are replace by the AMS. In addition, Cities recommended that the allowed carrying costs on AMS investments be based on the method specified in the commission's rules governing the determination of interest charges on electric utility competitive transition charges.

REPower does not support approval of a cost-recovery mechanism for meters that meet the functionality in §23.130(g). REPower added that a rate case would provide the best mechanism to ensure that all electric utility costs and benefits are accurately assessed. REPower believes that the additional expense of these advanced meters should be born by customers or REPs requesting such features and not by all customers.

Commission response

The commission disagrees with the Joint DSPs that this subsection should also be amended to clarify that a waiver can be obtained for advanced metering systems that were deployed prior to the rule and do not meet the minimum required standards. The commission agrees with CRM that the surcharge would apply to customers who received an advanced meter prior to the effective date of this rule. The commission disagrees with the cities that cost recovery should be contingent upon pilot program results. The commission agrees with REPower that a rate case is the best forum to ensure that all electric utility costs and benefits are accurately assessed. However, HB 2129 allows an electric utility the option to seek cost recovery outside of a rate case proceeding, and the rule is consistent with this approach.

§25.130(k)(2)

Joint DSPs requested that the second sentence in the subsection should be amended so that only actual meter-related savings are reduced from implementation costs. Savings that are predicted for future years should not reduce the costs to be recovered until such time as the savings are known with a measure of certainty. As currently proposed, the rule would require offsetting current costs by savings that are anticipated to be realized in future years, but that are not realized at the current time.

CRM recommended that the second sentence in proposed subsection (k)(2) be clarified by inserting the word "resulting" after the clause "cost savings" because the cost savings will be realized after the meters have been deployed, as opposed to from the deployment activity itself.

Commission response

The rule that the commission is adopting will leave the issue raised by the Joint DSPs to be resolved in connection with the surcharge proceedings. How to reflect savings may depend on how the electric utility plans to recover the costs of deploying AMS and the level of proof of deployment costs and savings. The recommendation of CRM is being adopted.

§25.130(k)(4) and Proposed New §25.130(k)(5)

Joint DSPs asked that the proposed language be modified to reflect the statutory language. Joint DSPs stated that the provision could be read to limit recovery to only one-third the cost of final deployment, even if such deployment did not result in more than one-third of the electric utility's total meters being replaced in any given year. The Joint DSPs also proposed adding a new §25.130(k)(5) that would outline the manner in which the advanced metering surcharge would be updated. The Joint DSPs indicated that their proposal is similar to the updates to the interim transmission costs of service.

Commission response

The commission agrees with the Joint DSPs' premise that the proposed rule should be revised to permit a more expedited cost recovery process. Joint DSPs' proposed revisions would permit the commission to order the surcharge of costs not yet paid and costs not yet found to be reasonable and necessary, but require that they be reconciled in a subsequent proceeding. Including in the surcharge only costs that have been paid and found to be reasonable and necessary would result in a substantial delay between the time the costs are paid by the electric utility and the time they are recovered through the surcharge. The commission agrees that the rule should provide it broader discretion in determining the costs that should be included in the surcharge, and has revised the rule accordingly. The DSPs proposed surcharge updates as frequently as quarterly. The commission has revised the rule to permit updates as frequently as annually, which is the appropriate balance between permitting timely adjustments to the surcharge and avoiding excessive administrative burdens and unpredictability to REPs that must pay the surcharge. The revised rule also does not address details concerning the types of costs included in the surcharge, because this issue warrants further consideration. The commission is addressing the type of cost information to include in a surcharge request in Project Number 33874, *Form for Transmission and Distribution Utility Advanced Metering Infrastructure Surcharge*.

Proposed new §25.130(l)

TXU Energy proposed a new subsection (l) be added to §25.130 to clarify that commission approval of a new time of use schedule ("TOUS") is not necessary prior to its implementation. TXU Energy elaborated that the benefits of the TOUS flow not only to the customer but also to the entire ERCOT system, by providing an economic incentive to customers to reduce load during peak hours of the day. With time of use information as contemplated under the proposed advanced metering rule, consumers will be presented with a price per kilowatt-hour difference between on-peak and off-peak that is sufficiently large to provide an incentive to consumers to conserve and/or shift energy use from peak demand hours to off-peak demand hours.

Commission response

The commission agrees with TXU Energy regarding this new section for TOUS and has added language to reflect this in the rule.

Comments for §25.311, Competitive Metering Services

Reliant agreed with all proposed changes for this section.

Elster and Hunt questioned the need for a list of meters qualified for Competitive Metering in subsection (e)(1), asking how meters would be placed on the list, how this relates to AMS data collection and why a list was needed if a meter met the standards of the rule.

Joint DSPs commented that subsection (f)(2) should be amended to refer to meters that are not owned by the TDU.

Joint DSPs stated that subsection (g) should not be changed to expand the parties who might request meter tests by the TDU, owing to the fact that the TDU's sole market relationship is with the customer's REP.

Elster and Hunt commented that in subsection (i)(1) there needs to be more detail on the process by which a REP can access meter data, as this has historically been the exclusive domain of the TDU.

Commission response

The commission disagrees with the Joint DSPs that subsection (f)(2) should be amended to reference meters not owned by the TDU. The commission agrees with the Joint DSPs that subsection (g) should not be changed. The commission agrees with Hunt that there needs to be more detail regarding the process by which a REP will access meter data, and has addressed this in §25.130(j).

§25.311(g)

Joint DSPs requested this subsection should not be amended to require that the costs be the responsibility of the requesting party. The current rule places the cost responsibility on the customer's REP and such responsibility should not be changed. TDUs do not have market relationships with the customer or the competitive meter owner. The TDUs' sole market relationship is with the REP; therefore, the TDUs should be able to obtain payment for testing meters from the REP, which in turn should bill the appropriate party for the services.

Commission response

The commission agrees with the Joint DSPs that the TDUs should be able to obtain payment for testing meters from the REP.

Comments for §25.346, Separation of Electric Utility Metering and Billing Service Costs and Activities

§25.346(g)(2)(C)

The Joint DSPs commented that this subsection should not be amended as proposed in the publication. Instead, the rule should remain as currently adopted. Any metering equipment that is added by a consumer should be done on the customer's side of the meter. As currently drafted, a customer can place equipment on the TDU's side of the meter. This introduces security concerns as to the data collected and sent from the meter. Any customer owned equipment should be located within the customer's premises.

Commission response

The commission concurs with the Joint DSPs that any metering equipment added by a consumer should be conducted on the customer's side of the meter.

SUBCHAPTER F. METERING

16 TAC §§25.121, 25.123, 25.130

The new section and amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (Vernon 1998, Supplement 2006) (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.107, which directs the commission to approve utility surcharges for the deployment of advanced meters, authorizes the commission to adopt rules relating to the transfer of customer data, and authorizes the commission to approve non-discriminatory rates for metering service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.107.

§25.121. Meter Requirements.

(a) Use of meter. All electricity consumed or demanded by an electric customer shall be charged for by meter measurements, except where otherwise provided for by the applicable rate schedule or contract.

(b) Installation. Unless otherwise authorized by the commission, each electric utility shall provide and install and shall continue to own and maintain all meters necessary for the measurement of electric energy to its customers.

(c) Standard type. All meters shall be of a standard type that meets industry standards. Advanced meters shall meet the standards in this section and §25.130 of this title (relating to Advanced Metering). Special meters used for investigation or experimental purposes are not required to conform to these standards.

(d) Location of meters.

(1) Meters and service switches in conjunction with the meter shall be installed in accordance with the latest revision of American National Standards Institute (ANSI), Incorporated, Standard C12 (American National Code for Electricity Metering), or other standards as may be prescribed by the commission, and will be readily accessible for reading, testing, and inspection, where such activities will cause minimum interference and inconvenience to the customer.

(2) Customer shall provide, without cost to the electric utility, at a suitable and easily accessible location:

(A) sufficient and proper space for installation of meters and other apparatus of electric utility;

(B) meter board;

(C) meter loop;

(D) safety service switches when required; and

(E) an adequate anchor for service drops.

(3) All meters installed after December 21, 1999, shall be located as set forth in this section, provided that, where installations are made to replace meters removed from service, this section shall not operate to require any change in meter locations which were established prior to this date, unless the electric utility finds that the old location is no longer suitable or proper, or the customer desires that the location be changed.

(4) Where the meter location on the customer's premises is changed at the request of the customer, or due to alterations on the customer's premises, the customer shall provide and have installed at his expense, all wiring and equipment necessary for relocating the meter.

(5) If provisions of this section are inconsistent with §25.214 of this title (relating to Tariff for Retail Delivery Service), the provisions of the Tariff shall control this section.

(e) Accuracy requirements.

(1) No meter that violates the test calibration limits as set by the American National Standards Institute, Incorporated, shall be placed in service or left in service. Whenever on installation, periodic, or other tests, a meter is found to violate these limits, it shall be adjusted or replaced.

(2) Meters shall be adjusted as closely as practicable to the condition of zero error.

(f) Notwithstanding any other commission rule, as a condition of receiving electric service or electric delivery service, the customer is deemed to have consented to the provision of meter data to the customer's electric utility, its retail electric provider, and the independent organization or regional transmission organization.

(g) If provisions of this subchapter are inconsistent with §25.214 of this title, the provisions of the Tariff shall control this subchapter.

§25.123. Meter Readings.

(a) Meter unit indication. Each meter display shall indicate clearly the kilowatt-hours or other units of service for which a charge is made to the utilities' customer.

(b) Reading of standard meters. As a matter of general practice, service meters shall be read at monthly intervals, and as nearly as possible on the corresponding day of each meter reading period, but may be read at other than monthly intervals if the circumstances warrant. The electric utility shall notify the customer of any changes to the customer's meter reading cycle. This subsection does not apply to advanced metering systems.

(c) Reading of advanced meters. Advanced meters shall be read by the electric utility at intervals required by the Applicable Legal Authorities defined in §25.214(d)(1) of this title (relating to Tariff for Retail Delivery Service).

(d) Customer-read program. For meters other than advanced meters, an electric utility in an area where retail competition has not been introduced, may use a customer-read program in which customers read their own meters and report their usage monthly. Such readings shall be considered an actual meter reading by the electric utility for billing purposes. However, an electric utility shall read the meters of customers on a customer-read program at least every six months to verify the accuracy of the electric utility's records.

§25.130. Advanced Metering.

(a) Purpose. The purposes of this section are to authorize electric utilities to assess a nonbypassable surcharge to use to recover costs incurred for deploying advanced metering systems that are consistent with this section; increase the reliability of the regional electrical network; encourage dynamic pricing and demand response; improve the deployment and operation of generation, transmission and distribution assets, and provide more choices for electric customers.

(b) Applicability. This section is applicable to all electric utilities, including transmission and distribution utilities, other than an electric utility that, pursuant to Public Utility Regulatory Act (PURA) §39.452(d)(1), is not subject to PURA §39.107; and to the Electric Reliability Council of Texas (ERCOT).

(c) Definitions.

(1) Advanced meter--Any new or appropriately retrofitted meter that functions as part of an advanced metering system and that has the features specified in this section.

(2) Advanced Metering System (AMS)--A system, including advanced meters and the associated hardware, software, and communications systems, including meter information networks, that collects time-differentiated energy usage and performs the functions and has the features specified in this section.

(3) Deployment Plan--An electric utility's plan for deploying advanced meters in accordance with this section and either filed with the commission as part of the Notice of Deployment or approved by the commission following a Request for Approval of Deployment.

(4) Dynamic Pricing--Retail pricing for electricity consumed that varies during different times of the day.

(5) Non-standard advanced meter--A meter that contains features and functions in addition to the AMS features in the deployment plan approved by the commission.

(d) Deployment and use of advanced meters.

(1) Deployment and use of AMS by an electric utility is voluntary unless otherwise ordered by the commission. However, deployment and use of an AMS for which an electric utility seeks a surcharge for cost recovery shall be consistent with this section, except to the extent that the electric utility has obtained a waiver from the commission.

(2) Six months prior to initiating deployment of an AMS or as soon as practicable after the effective date of this section, whichever is later, an electric utility that intends to deploy an AMS shall file a Statement of AMS Functionality, and either a Notice of Deployment or a Request for Approval of Deployment. An electric utility may request a surcharge pursuant to subsection (k) of this section in combination with a Notice of Deployment or a Request for Approval of Deployment, or separately. A proceeding that includes a request to establish or amend a surcharge shall be a ratemaking proceeding and a proceeding involving only a Request for Approval of Deployment shall not be a ratemaking proceeding.

(3) The Statement of AMS Functionality shall:

(A) state whether the AMS meets the requirements specified in subsection (g) of this section and what additional features, if any, it will perform;

(B) describe any variances between technologies and meter functions within its service territory; and

(C) state whether the electric utility intends to seek a waiver of any provision of this section in its request for surcharge.

(4) A Deployment Plan shall contain the following information:

(A) Type of meter technology;

(B) Type and description of communications equipment in the AMS;

(C) Systems that will be developed during the deployment period;

(D) A timeline for the web portal development;

(E) A deployment schedule by specific area (geographic information);

(F) When postings of monthly status reports on the electric utility's website will commence; and

(G) A schedule for deployment of web portal functionalities.

(5) An electric utility shall file with the Deployment Plan, testimony and other supporting information, including estimated costs for all AMS components, estimated net operating cost savings expected in connection with implementing the Deployment Plan, and the contracts for equipment and services associated with the Deployment Plan, that prove the reasonableness of the plan.

(6) Competitively sensitive information contained in the Deployment Plan and monthly progress reports may be filed confidentially. An electric utility's Deployment Plan shall be maintained and made available for review on the electric utility's website for REP access. Competitively sensitive information contained in the Deployment Plan shall be maintained and made available at the electric utility's offices in Austin. Any REP that wishes to review competitively sensitive information contained in the electric utility's deployment plan available at its Austin office, may do so during normal business hours upon reasonable advanced notice to the electric utility and after executing a non-disclosure agreement with the electric utility.

(7) If the request for approval of a Deployment Plan contains the information described in paragraph (4) of this subsection and the AMS features described in subsection (g)(1) of this section, then the commission shall approve or disapprove the Deployment Plan within 150 days, but this deadline may be extended by the commission for good cause.

(8) An electric utility's treatment of AMS, including technology, functionalities, services, deployment, operations, maintenance, and cost recovery shall not be unreasonably discriminatory, prejudicial, preferential, or anticompetitive.

(9) Each electric utility shall provide progress reports on a monthly basis and status reports every six months following the filing of its Deployment Plan with the commission until deployment is complete. Upon filing of such reports, the electric utility shall notify all certified REPs of the filing through standard market notice procedures. A monthly progress report shall be filed within 15 days of the end of the month to which it applies, and shall include the following information:

(A) the number of advanced meters installed, listed by ESI ID. Additional information if available may also be listed, such as county, city, zip code, feeder numbers, and any other easily discernable geographic identification available to the electric utility;

(B) significant delays or deviation from the Deployment Plan and the reasons for the delay or deviation;

(C) a description of significant problems the electric utility has experienced with an AMS, with an explanation of how the problems are being addressed;

(D) the number of advanced meters that have been replaced as a result of problems with the AMS; and

(E) the status of deployment of features identified in the Deployment Plan and any changes in deployment of these features.

(10) If an electric utility has received approval of its Deployment Plan from the commission, the electric utility shall obtain commission approval before making any changes to its AMS that would affect a REP's ability to utilize any of the AMS features identified in the electric utility's Deployment Plan by filing a request for amendment to its Deployment Plan. In addition, an electric utility may request commission approval for other changes in its approved Deployment Plan. The commission shall act upon the request for an amendment to the Deployment Plan within 45 days of submission of the request, unless good cause exists for additional time. If an electric utility filed a Notice of Deployment, the electric utility shall file an amendment to its Notice of Deployment at least 45 days before making any changes to its AMS that would affect a REP's ability to utilize any of the AMS features identified in the electric utility's Notice of Deployment. This paragraph does not in any way preclude the electric utility from conducting its normal operations and maintenance with respect to the electric utility's transmission and distribution system and metering systems.

(11) During and following deployment, any outage related to normal operations and maintenance that affects a REP's ability to obtain information with the system shall be communicated to the REP through the outage/restoration notice process according to Applicable Legal Authorities, as defined in §25.214(d)(1) of this title (relating to Tariff for Retail Delivery Service).

(12) The electric utility shall not provide any advanced metering equipment or service that is deemed a competitive energy service under §25.343 of this title (relating to Competitive Energy Services). Any functionality of the AMS that is a required function under this section or that is included in an approved Deployment Plan does not constitute a competitive energy service under §25.343 of this title.

(13) An electric utility's deployment and provision of AMS services and features, including but not limited to the features required in subsection (g) of this section, are subject to the limitation of liability provisions found in the electric utility's tariff.

(e) Technology requirements. Except for pilot programs, an electric utility shall not deploy AMS technology that has not been successfully installed previously with at least 500 advanced meters in North America, Australia, Japan, or Western Europe.

(f) Pilot programs. An electric utility may deploy AMS with up to 10,000 meters that do not meet the requirements of subsection (g) of this section in a pilot program, to gather additional information on metering technologies, pricing, and management techniques, for studies, evaluations, and other reasons. A pilot program may be used to satisfy the requirement in subsection (e) of this section. An electric utility is not required to obtain commission approval for a pilot program. Notice of the pilot program and opportunity to participate shall be sent by the electric utility to all REPs.

(g) AMS features.

(1) An AMS shall provide or support the following minimum system features in order to obtain cost recovery through a surcharge pursuant to subsection (k) of this section:

(A) automated or remote meter reading;

(B) two-way communications;

(C) remote disconnection and reconnection capability for meters rated at or below 200 amps, provided that an electric utility shall be considered in compliance with this provision if it makes this function available in all advanced meters installed after the effective date of this rule, and the following meters shall also be considered in compliance with this provision: those advanced meters that were ordered prior to the effective date of this rule, not to exceed 65,000 meters over the number of meters received or ordered as of May 10, 2007, and are provisioned with all the features enumerated in this paragraph except remote disconnect and reconnect capability, if those advanced meters are installed by December 31, 2007, and the number of advanced meters installed with all the features enumerated in this paragraph except remote disconnect and reconnect capability does not exceed 18% of the total number of advanced meters installed by the electric utility pursuant to a Deployment Plan.

(D) the capability to time-stamp meter data sent to the independent organization or regional transmission organization for purposes of wholesale settlement, consistent with time tolerance standards adopted by the independent organization or regional transmission organization;

(E) the capability to provide direct, real-time access to customer usage data to the customer and the customer's REP, provided that:

(i) hourly data shall be transmitted to the electric utility's web portal on a day-after basis.

(ii) the commission staff using a stakeholder process, as soon as practicable shall determine, subject to commission approval, when and how 15-minute IDR data shall be made available on the electric utility's web portal.

(F) means by which the REP can provide price signals to the customer;

(G) the capability to provide 15-minute or shorter interval data to REPs, customers, and the independent organization or regional transmission organization, on a daily basis, consistent with data availability, transfer and security standards adopted by the independent organization or regional transmission organization;

(H) on-board meter storage of meter data that complies with nationally recognized non-proprietary standards such as in American National Standards Institute (ANSI) C12.19 tables;

(I) open standards and protocols that comply with nationally recognized non-proprietary standards such as ANSI C12.22, including future revisions thereto;

(J) capability to communicate with devices inside the premises, including, but not limited to, usage monitoring devices, load control devices, and prepayment systems through a home area network (HAN), based on open standards and protocols that comply with nationally recognized non-proprietary standards such as ZigBee, Home-Plug, or the equivalent; and

(K) the ability to upgrade these minimum capabilities as technology advances and, in the electric utility's determination, become economically feasible.

(2) An electric utility shall offer, as discretionary services in its tariff, installation of non-standard meters and advanced meter features.

(A) A REP may require the electric utility to provide non-standard advanced meters, additional metering technology, or advanced meter features not specifically offered in the electric utility's tariff, that are technically feasible, generally available in the market, and compatible with the electric utility's AMS;

(B) The REP shall pay the reasonable differential cost for the non-standard advanced meters or features.

(C) Upon request by a REP, an electric utility shall expeditiously provide a report to the REP that includes an evaluation of the cost and a schedule for providing the nonstandard advanced meters or advanced meter features of interest to the REP. The REP shall pay a reasonable discretionary services fee for this report. This discretionary services fee shall be included in the electric utility's tariff.

(D) If an electric utility agrees to deploy non-standard advanced meters or advanced meter features not addressed in its tariff at the request of the REP, the electric utility shall expeditiously apply to amend its tariff to specifically include the non-standard advanced meters or meter features that it agreed to deploy.

(3) An electric utility may petition the commission for a waiver of the requirements of paragraph (1) of this subsection for portions of its service area where it would be uneconomic or technically infeasible to implement particular system features. A waiver may also be granted for an AMS that exceeds or is an adequate substitute for the requirements in paragraph (1) of this subsection. The electric utility shall provide all relevant studies and cost-benefit analysis and other evidence supporting its waiver request and shall bear the burden of proof in its waiver request. An electric utility that has received a waiver shall explain in the report required by subsection (d)(7) of this section, technology changes and changes in the cost of deployment or savings to the electric utility that would make it economic or technically feasible to offer the system features in the affected portions of its service area. Any waiver granted by the commission shall extend only to those costs and expenses for which the waiver is granted in any proceeding in which the electric utility seeks to recover its costs through the surcharge mechanism addressed in subsection (k) of this section.

(4) In areas where there is not a commission-approved independent regional transmission organization, standards referred to in this section for time tolerance and data transfer and security may be approved by a regional transmission organization approved by the Federal Energy Regulatory Commission or, if there is no approved regional transmission organization, by the commission.

(5) Once an electric utility has deployed its advanced meters, it may add or enhance features provided by AMS, as technology evolves and in accordance with Applicable Legal Authorities. The electric utility shall notify the commission and REPs of any such additions or enhancements at least three months in advance of deployment, with a description of the features, the deployment and notification plan, and the cost of such additions or enhancements, and shall follow the monthly progress report process described in subsection (d)(8) of this section until the enhancement process is complete.

(6) Beginning January 1, 2008, or as soon as such meters are commercially available from the electric utility's current vendor, whichever is earlier, an electric utility shall replace, at no cost to the customer, an advanced meter with all the features enumerated in paragraph (1) of this subsection except remote disconnect and reconnect capability, if: the meter has reached the end of its useful life; the meter has been removed for repair; the premises at which the meter is located

has experienced an unusually high number of disconnections and reconnections; or the REP has informed the electric utility that its customer has agreed to utilize a prepaid service and the REP has requested a meter with remote disconnection and reconnection capability. If by January 1, 2009, requests by REPs for replacement of advanced meters with all the features enumerated in paragraph (1) of this subsection except remote disconnect and reconnect capability exceed 20% of those meters, then the electric utility shall replace all of those meters as soon as possible with meters that meet the requirements of paragraph (1) of this subsection and have remote disconnect and reconnect capability.

(h) Settlement. It is the objective of this rule that ERCOT shall be able to use 15-minute meter information from advanced metering systems for wholesale settlement, not later than January 31, 2010.

(i) Tariff. All non-standard, discretionary AMS features offered by the electric utility shall be described in the electric utility's tariff.

(j) Access to meter data.

(1) An electric utility shall provide a customer, the customer's REP, and other entities authorized by the customer read-only access to the customer's advanced meter data, including meter data used to calculate charges for service, historical load data, and any other proprietary customer information. The access shall be convenient and secure, and the data shall be made available no later than the day after it was created.

(2) The requirement to provide access to the data begins when the electric utility has installed 2,000 advanced meters for residential and non-residential customers. If an electric utility has already installed 2,000 advanced meters by the effective date of this section, the electric utility shall provide access to the data in the timeframe approved by the commission in either the Deployment Plan or request for surcharge proceeding. If only a Notice of Deployment has been filed, access to the data shall begin no later than six months from the filing of the Notice of Deployment with the commission.

(3) An electric utility shall use industry standards and methods for providing secure customer and REP access to the meter data. The electric utility shall have an independent security audit of the mechanism for customer and REP access to meter data conducted within one year of initiating such access and promptly report the results to the commission.

(4) The independent organization, regional transmission organization, or regional reliability entity shall have access to information that is required for wholesale settlement, load profiling, load research, and reliability purposes.

(5) A customer may authorize its data to be available to an entity other than its REP.

(k) Cost recovery for deployment of AMS.

(1) Recovery Method. The commission shall establish a nonbypassable surcharge for an electric utility to recover reasonable and necessary costs incurred in deploying AMS to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter. The surcharge shall not be established until after a detailed Deployment Plan is filed pursuant to subsection (d) of this section. In addition, the surcharge shall not ultimately recover more than the AMS costs that are spent, reasonable and necessary, and fully allocated, but may include estimated costs that shall be reconciled pursuant to paragraph (6) of this subsection. As indicated by the definition of AMS in subsection (c)(2) of this section, the costs for facilities that do not perform the functions and have the features specified in this section shall not be included in the surcharge provided for by this subsection unless an electric utility has received a waiver pursuant to subsection (g)(3) of this section. The costs of providing AMS services include those costs of AMS installed as part of a pilot program pursuant to this section. Costs of providing AMS for a particular customer class shall be surcharged only to customers in that customer class.

(2) Carrying Costs. The annualized carrying-cost rate to be applied to the unamortized balance of the AMS capital costs shall be the electric utility's authorized weighted-average cost of capital (WACC). If the commission has not approved a WACC for the electric utility within the last four years, the commission may set a new WACC to apply to the unamortized balance of the AMS capital costs. In each subsequent rate proceeding in which the commission resets the electric utility's WACC, the carrying-charge rate that is applied to the unamortized balance of the utility's AMS costs shall be correspondingly adjusted to reflect the new authorized WACC.

(3) Surcharge Proceeding. In the request for surcharge proceeding, an electric utility may propose a surcharge methodology, but the commission prefers the stability of a levelized amount, and an amortization period ranging from five to seven years, depending on the useful life of the meter. The commission may set the surcharge to reflect a deployment of advanced meters that is up to one-third of the electric utility's total meters over each calendar year, regardless of the rate of actual AMS deployment. The actual or expected net operating cost savings from AMS deployment, to the extent that the operating costs are not reflected in base rates, may be considered in setting the surcharge. If an electric utility that requests a surcharge does not have an approved Deployment Plan, the commission in the surcharge proceeding may reconcile the costs that the electric utility already spent on AMS in accordance with paragraph (6) of this subsection and may approve a Deployment Plan.

(4) General Base Rate Proceeding while Surcharge Is in Effect. If the commission conducts a general base rate proceeding while a surcharge under this section is in effect, then the commission shall include the reasonable and necessary costs of installed AMS equipment in the base rates and decrease the surcharge accordingly, and permit reasonable recovery of any non-AMS metering equipment that has not yet been fully depreciated but has been replaced by the equipment installed under an approved Deployment Plan.

(5) Annual Reports. An electric utility shall file annual reports with the commission updating the cost information used in setting the surcharge. The annual reports shall include the actual costs spent to date in the deployment of AMS and the actual net operating cost savings from AMS deployment and how those numbers compare to the projections used to set the surcharge. During the annual report process, an electric utility may apply to update its surcharge, and the commission may set a schedule for such applications. For a levelized surcharge, the commission may alter the length of the surcharge collection period based on review of information concerning changes in deployment costs or operating costs savings in the annual report or changes in WACC. An annual report filed with the commission shall not be a ratemaking proceeding, but an application by the electric utility to update the surcharge shall be a ratemaking proceeding.

(6) Reconciliation Proceeding. All costs recovered through the surcharge shall be reviewed in a reconciliation proceeding on a schedule to be determined by the commission. Notwithstanding the preceding sentence, the electric utility may request multiple reconciliation proceedings, but no more frequently than once every three years. There is a presumption that costs spent in accordance with a Deployment Plan or amended Deployment Plan approved by the Commission are reasonable and necessary. Any costs recovered through the surcharge that are found in a reconciliation proceeding not

to have been spent or properly allocated, or not to be reasonable and necessary, shall be refunded to electric utility's customers. In addition, the commission shall make a final determination of the net operating cost savings from AMS deployment used to reduce the amount of costs that ultimately can be recovered through the surcharge. Accrual of interest on any refunded or surcharged amounts resulting from the reconciliation shall be at the electric utility's WACC and shall begin at the time the under or over recovery occurred.

(7) Cross-subsidization and fees. The electric utility shall account for its costs in a manner that ensures that there is no inappropriate cost allocation, cost recovery, or cost assignment that would cause cross-subsidization between utility activities and non-utility activities. The electric utility shall not charge a disconnection or reconnection fee that was approved by the commission prior to the effective date of this rule, for a disconnection or reconnection that is effectuated using the remote disconnection or connection capability of an advanced meter.

(l) Time of Use Schedule. Commission approval of a time of use schedule ("TOUS") pursuant to ERCOT protocols is not necessary prior to implementation of the new TOUS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 936-7223

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SUBCHAPTER M. COMPETITIVE METERING

16 TAC §25.311

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (Vernon 1998, Supplement 2006) (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.107, which directs the commission to approve utility surcharges for the deployment of advanced meters, authorizes the commission to adopt rules relating to the transfer of customer data, and authorizes the commission to approve non-discriminatory rates for metering service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.107.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER O. UNBUNDLING AND MARKET POWER
DIVISION 1. UNBUNDLING

16 TAC §25.346

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (Vernon 1998, Supplement 2006) (PURA), which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.107, which directs the commission to approve utility surcharges for the deployment of advanced meters, authorizes the commission to adopt rules relating to the transfer of customer data, and authorizes the commission to approve non-discriminatory rates for metering service.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, and 39.107.

§25.346. Separation of Electric Utility Metering and Billing Service Costs and Activities.

(a) Purpose. The purpose of this section is to identify and separate electric utility metering and billing service activities and costs for the purposes of unbundling.

(b) Application. This section shall apply to electric utilities as defined in Public Utility Regulatory Act (PURA) §31.002 in areas where customer choice is in effect.

(c) Separation of transmission and distribution utility billing system service costs.

(1) Transmission and distribution utility billing system services shall include costs related to the billing services described in §25.341(15) of this title (relating to Definitions).

(2) Charges for transmission and distribution utility billing system services shall not include any additional capital costs, operation and maintenance expenses, and any other expenses associated with billing services as prescribed by PURA §39.107(e).

(d) Separation of transmission and distribution utility billing system service activities.

(1) Transmission and distribution utility billing system services as defined in §25.341 of this title shall be provided by the transmission and distribution utility.

(2) The transmission and distribution utility may provide additional retail billing services pursuant to PURA §39.107(e).

(3) Additional retail billing services pursuant to PURA §39.107(e) shall be provided on an unbundled discretionary basis pursuant to a commission-approved embedded cost-based tariff.

(4) The transmission and distribution utility may not directly bill an end-use retail customer for services that the transmission and distribution utility provides except when the billing is incidental to providing retail billing services at the request of a retail electric provider pursuant to PURA §39.107(e).

(e) Uncollectibles and customer deposits.

(1) The retail electric provider is responsible for collection of its charges from retail customers and measures to secure payment.

(2) For the purposes of functional cost separation in §25.344 of this title (relating to Cost Separation Proceedings), retail customer uncollectibles and deposits shall be assigned to the unregulated function, as prescribed by §25.344(g)(2)(I) of this title.

(f) Separation of transmission and distribution utility metering system service costs. Transmission and distribution utility metering system services shall include costs related to the transmission and distribution utility metering system services as defined in §25.341 of this title.

(g) Separation of transmission and distribution utility metering system service activities.

(1) Prior to the introduction of customer choice, metering service shall be provided in accordance with Subchapter F of this chapter (relating to Metering). An electric utility shall continue to provide metering services pursuant to commission rules and regulations, but shall not engage in the provision of competitive energy services as defined by §25.341 of this title and prescribed by §25.343 of this title (relating to Competitive Energy Services).

(2) On the introduction of customer choice in a service area, metering services as described by §25.341(17) of this title for the area shall continue to be provided by the transmission and distribution utility affiliate (or successor in interest) of the electric utility that was serving the area before the introduction of customer choice, but the transmission and distribution utility shall not engage in the provision of competitive energy services as defined by §25.341 of this title and prescribed by §25.343 of this title.

(A) Standard meter service shall be provided in accordance with this subparagraph. Advanced meter service shall be provided in accordance with §25.130 of this title (relating to Advanced Metering).

(i) The standard meter shall be owned, installed, and maintained by the transmission and distribution utility except as prescribed by §25.311 of this title (relating to Competitive Metering Services).

(ii) The transmission and distribution utility shall bill a retail electric provider for non-bypassable charges based upon the measurements obtained from each end-use customer's standard meter.

(iii) If the retail electric provider requests the replacement of the standard meter with an advanced meter, the transmission and distribution utility shall charge the retail electric provider the incremental cost for the replacement of the standard meter with an advanced meter owned, operated, and maintained by the transmission and distribution utility.

(iv) Without authorization from the retail electric provider, the transmission and distribution utility's use of advanced meter data shall be limited to that energy usage information necessary for the calculation of transmission and distribution charges in accordance with that end-use customer's transmission and distribution rate schedule.

(B) Nothing in this section precludes the retail electric provider from accessing the transmission and distribution utility's standard meter for the purposes of determining an end-use customer's energy usage.

(C) Nothing in this section precludes the end-use customer or the retail electric provider from owning, installing, and maintaining metering equipment in addition to the standard meter.

(h) Competitive energy services.

(1) Nothing in this section is intended to affect the provision of competitive energy services, including those that require access to the customer's meter.

(2) An electric utility shall not provide any service that is deemed a competitive energy service under §25.341 of this title except as provided under §25.343 of this title.

(i) Electronic data interchange.

(1) All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall transmit data in accordance with standards and procedures adopted by the commission or the independent organization.

(2) All transmission and distribution utilities, retail electric providers, power generation companies, power marketers, and electric utilities shall abide by the settlement procedures adopted by the commission or the independent organization.

(3) Transmission and distribution utilities shall be allowed to recover such costs as prudently incurred in abiding by this subsection, to the extent not collected elsewhere, such as through the administrative fee of an independent organization.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

19 TAC §153.1011

The Texas Education Agency (TEA) adopts new §153.1011, concerning beginning teacher induction and mentoring program. The new section is adopted with changes to the proposed text as published in the March 9, 2007, issue of the *Texas Register*

(32 TexReg 1184). The adopted new section implements the requirements of the Texas Education Code (TEC), §21.458, Mentors, as added by House Bill 1, 79th Texas Legislature, Third Called Session, 2006, that requires the commissioner of education to adopt rules for the administration of the mentor program for beginning teachers.

TEC, §21.458, requires the commissioner of education to adopt rules to administer mentoring programs designed to increase retention of beginning teachers. The statute directs the commissioner to adopt rules addressing qualifications of a mentor and uses for mentor program funding. In adopting these rules, the commissioner is to rely on research-based mentoring programs that have demonstrated success.

In accordance with the TEC, §21.458, the adopted new 19 TAC §153.1011 establishes definitions and provisions relating to the beginning teacher induction and mentoring program, including program implementation and the qualifications, assignment, and duties of a mentor teacher. The adopted new rule specifies provisions for the allocation and use of mentor program funding, allows for the TEA to audit mentor program funds, and requires each district providing a program to submit progress reports to the commissioner within a specified period and in a prescribed manner.

In response to public comment, the rule was modified since published as proposed. Subsection (b), relating to program implementation, was modified to specify that a beginning teacher induction and mentoring program must also demonstrate success in teacher retention. In addition, a new subsection (b)(5) was added to provide for continuous support and ongoing professional development for mentor teachers as well as scheduled release time for the mentor to fulfill mentoring duties. The subsequent paragraph in subsection (b) was renumbered accordingly.

The public comment period on the proposal began March 9, 2007, and ended April 8, 2007. The following is a summary of the public comments received on the proposed new 19 TAC §153.1011 and the corresponding agency responses.

Comment. The Texas Classroom Teachers Association (TCTA) commented on the importance of teacher retention and cited statistics and the evaluation of the Texas Beginning Educator Support System (TxBESS) as support for addressing teacher retention in the proposed new rule. The TCTA requested that teacher retention be mentioned in subsection (b), relating to program implementation, and in subsection (h), relating to program review. The TCTA also commented on the importance of training and scheduled release time for mentors. The TCTA requested that subsection (b) be expanded to include continuous support and ongoing professional development tailored to the needs of mentor teachers and scheduled release time in order for a mentor teacher to fulfill mentoring duties as described.

Agency Response. The agency agrees in part and disagrees in part and incorporated some of the recommended additions. New subsection (b)(5) was added to address support and professional development for mentor teachers as well as scheduled release time in order for a mentor teacher to fulfill mentoring duties. Subsection (b) was modified to include teacher retention as a component of program implementation. However, subsection (h) was not modified to require the collection of numbers of teachers retained at participating campuses. Retention in the teaching profession as a whole is the goal of the program rather than retention at the local campus level.

Comment. The executive director of the Texas Staff Development Council requested that subsection (b)(4) be removed based on the rationale that the rule directs professional development for the induction year teacher as opposed to the mentor teacher.

Agency Response. The agency disagrees with removing subsection (b)(4) but agrees with providing support and training for mentor teachers. There was a wording problem in the proposal, and a correction is reflected in the adopted rule. The agency maintained language in subsection (b)(4) for support and professional development for beginning teachers and added new subsection (b)(5) to address support and professional development for mentor teachers.

Comment. A representative from Cypress Fairbanks ISD requested the website for directions in completing grant applications for mentoring programs.

Agency Response. The agency provided the website address. TEA grant opportunities are available at: http://burleson.tea.state.tx.us/GrantOpportunities/forms/. The deadline for receipt of applications for the 2007-2009 Beginning Teacher Induction and Mentoring Program is May 17, 2007.

The new section is adopted under the Texas Education Code, §21.458, which requires the commissioner of education to adopt rules necessary to administer the mentor program, including rules concerning the duties and qualifications of a teacher who serves as a mentor.

The new section implements the Texas Education Code, §21.458.

§153.1011. Beginning Teacher Induction and Mentoring Program.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--Texas Education Agency.

(2) Beginning teacher--A classroom teacher who has less than two years of teaching experience.

(3) Beginning Teacher Induction and Mentoring Program--An annual grant program established in accordance with the Texas Education Code (TEC), §21.458, under which a school district may receive funds to establish a mentoring program at each eligible campus where a mentor teacher is assigned to each classroom teacher who has less than two years of teaching experience.

(4) Classroom teacher--An educator who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technology instructional setting. The term does not include a teacher's aide or a full-time administrator.

(A) For a school district, a classroom teacher, as defined in this subsection, must hold an appropriate certificate issued by the State Board for Educator Certification and must meet the specifications regarding instructional duties defined in this paragraph.

(B) For a charter school, a classroom teacher is not required to be certified but must meet the qualifications of the employing charter school and the specifications regarding instructional duties defined in this paragraph.

(5) Commissioner--Commissioner of education.

(6) Mentor teacher--A classroom teacher in Texas who provides effective support to help beginning teachers successfully transition into the teaching profession.

(7) School district--For the purposes of this section, the definition of school district includes open-enrollment charter school.

(8) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(b) Program implementation. A beginning teacher induction and mentoring program must be a research-based mentoring program that, through external evaluation, has demonstrated success in improving new teacher quality and teacher retention. Programs must be approved by the commissioner in a process to be determined by the Agency. Such a program must provide orientation and mentoring specifically tailored for beginning teachers that includes the following:

(1) a process for the recruitment of mentor teachers;

(2) a structured mentoring component based upon research in:

(A) teacher induction;

(B) beginning teacher development; and

(C) quality professional development;

(3) regular teacher observations and standards-based assessments;

(4) continuous support and ongoing professional development tailored to the needs of beginning teachers that includes:

(A) collecting and analyzing student performance data;

(B) classroom management; and

(C) pertinent topics related to pedagogy and student achievement;

(5) continuous support and ongoing professional development tailored to the needs of mentor teachers that includes topics listed in paragraph (4) of this subsection and scheduled release time in order for a mentor teacher to fulfill mentoring duties as described in this section; and

(6) training for administrators on implementing and supporting an induction and mentoring program.

(c) Qualifications of a mentor teacher. To serve as a mentor teacher, a teacher must:

(1) have a minimum of three years of teaching experience with a superior record of assisting students in achieving improvement in student performance;

(2) complete a research-based mentor and induction training program approved by the commissioner; and

(3) complete a mentor training program provided by the district.

(d) Assignment of a mentor teacher. Each school district may assign a mentor teacher to a beginning teacher.

(1) In order for a teacher to be assigned as a mentor teacher, in accordance with the TEC, §21.458, the teacher must:

(A) teach in the same school as the beginning teacher; and

(B) meet the qualifications specified in subsection (c) of this section.

(2) The organization may elect to use funds to employ retired teachers or other instructional personnel who meet the definition and qualifications of a mentor teacher described in this section.

(3) To the extent practicable, a school district will assign a mentor teacher to a beginning teacher who teaches or has taught the same subject or grade level. A local school district board of trustees' decision determining whether such an assignment is practicable is final and may not be appealed to the commissioner.

(e) Duties of a mentor teacher. A mentor teacher must:

(1) participate in beginning teacher orientation;

(2) meet weekly with the beginning teacher;

(3) maintain documentation of mentor/beginning teacher activities;

(4) attend regularly scheduled campus mentor support meetings and trainings;

(5) provide support to new teachers in collecting and analyzing student data, classroom management, curriculum planning, and other activities related to pedagogy and improved student achievement;

(6) conduct observations and assessments of the beginning teacher; and

(7) complete all requirements of the school district's beginning teacher induction and mentoring program.

(f) Allocation and use of funds. In accordance with the TEC, §21.458, funds may only be used for the following:

(1) mentor teacher stipends;

(2) release time for mentor teachers and beginning teachers to meet regularly for conferencing, observations, networking sessions, shared professional development, and other mentoring activities; and

(3) mentoring support through providers of mentor training.

(g) Audit of funds. The Agency may audit, disallow, and recover grant funds. A decision to award, audit, disallow, or recover funds by the commissioner or commissioner's designee is final.

(h) Program review. School districts awarded grant funds must agree to submit all information requested by the Agency through periodic activity/progress reports. Reports will be due no later than 30 days after the close of the reporting period and must contain all requested information in the format prescribed by the commissioner. A final evaluation report must include:

(1) the total number of beginning teachers and mentor teachers who actually participated in the beginning teacher induction and mentoring program;

(2) the use of funds and activities conducted; and

(3) any other pertinent information deemed appropriate by the commissioner.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701827

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: May 31, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.6

The Texas State Board of Pharmacy adopts amendments to §297.6, concerning Pharmacy Technician and Pharmacy Technician Trainee Training. The amendments are adopted without changes to the proposed text as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1455).

The amendments clarify that pharmacy technicians and pharmacy technician trainees must receive training with regard to the handling of confidential patient records.

No comments were received regarding adoption of the amendments.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 14, 2007.

TRD-200701853
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: June 3, 2007
Proposal publication date: March 16, 2007
For further information, please call: (512) 305-8028

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.5

The Texas Board of Physical Therapy Examiners adopts an amendment to §329.5, concerning Licensing Procedures for Foreign-trained Applicants, without changes to the proposed text as published in the March 23, 2007, issue of the *Texas Register* (32 TexReg 1694). The adopted amendment expands the list of applicants who do not have to demonstrate efficiency in the English language.

The adopted amendment corrects a statement regarding the waiver of the TOEFL test requirements for certain applicants by adding a category that was inadvertently left off. The TOEFL test requirement is also waived for graduates of entry-level programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) at time of graduation.

No comments were received regarding this adopted section.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701798
John M. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: May 30, 2007
Proposal publication date: March 23, 2007
For further information, please call: (512) 305-6900

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.16

The Texas State Board of Examiners of Psychologists adopts new rule §461.16, Inaccurate and False Information in Licensure Application/Documentation and for Annual Licensure Renewal Application/Documentation with no changes to the proposed text published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1190).

The amendments are being adopted to clearly state that it is a violation of rules to provide inaccurate or false information on an application for licensure or renewal.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701810
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 30, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7706

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists adopts amendments to rule §465.1, Definitions, with no changes to the proposed text published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1190).

The amendments are being adopted to make grammatical corrections in the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701811
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 30, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.4

The Texas State Board of Examiners of Psychologists adopts amendments to rule §465.4, Employment of Individuals Not Licensed by This Board, with no changes to the proposed text published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1191).

The amendments are being adopted to make grammatical corrections in the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701812
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 30, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.5

The Texas State Board of Examiners of Psychologists adopts amendments to rule §465.5, Practice in Psychology, with no changes to the proposed text published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1191).

The amendments are being adopted to clarify the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701813
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 30, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.6

The Texas State Board of Examiners of Psychologists adopts amendments to rule §465.6, Listings, Public Statements and Advertisements, Solicitations, and Specialty Titles, with no changes

to the proposed text published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1192).

The amendments are being adopted to make technical corrections to the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701815
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 30, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.7

The Texas State Board of Examiners of Psychologists adopts amendments to rule §465.7, Display of License/Renewal Permit, with no changes to the proposed text published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1193).

The amendments are being adopted to clarify the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701816
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 30, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.9

The Texas State Board of Examiners of Psychologists adopts amendments to rule §465.9, Competency, with no changes to the proposed text published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1193).

The amendments are being adopted to clarify the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200701817
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 30, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.22

The Texas State Board of Examiners of Psychologists adopts amendments to rule §465.22, Psychological Records, Test Data and Test Protocols, with no changes to the proposed text published in the March 9, 2007 issue of the *Texas Register* (32 TexReg 1193).

The amendments are being adopted to clarify the rule to state that falsifying patient records and reports is prohibited.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701819

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7706

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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.21

The Texas State Board of Examiners of Psychologists adopts amendments to rule §470.21, Disciplinary Guidelines, with no changes to the proposed text published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1194).

The amendments are being adopted to make the rule consistent with §470.22(b)(4) concerning revocation for licensure for fraud in obtaining a license.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701820
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 30, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7706

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CHAPTER 473. FEES

22 TAC §473.7

The Texas State Board of Examiners of Psychologists adopts amendments to rule §473.7, Penalties, with no changes to the proposed text published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1195).

The amendments are being adopted to clarify the rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 10, 2007.

TRD-200701821
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: May 30, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 305-7706

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

SUBCHAPTER H. LOW EMISSION FUELS

DIVISION 2. LOW EMISSION DIESEL

30 TAC §114.318

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §114.318 *without changes* to the proposed text as published in the January 26, 2007, issue of the *Texas Register* (32 TexReg 279). The text of the amendments will not be republished.

The amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

In April 2000 the commission adopted rules establishing requirements for low emission diesel (LED), and requiring that only LED be sold for on-road and off-road use in the Dallas/Fort Worth (DFW) nonattainment counties as part of that area's ozone attainment demonstration SIP. These new diesel fuel standards were to go into effect May 1, 2002. In December 2000 the commission adopted amendments to the LED rules expanding their coverage to the entire state and made the diesel fuel content limits for sulfur more stringent than federal diesel fuel regulations for on-road vehicles. The commission submitted, as part of that SIP revision, a waiver in accordance with 42 United States Code (USC), §7545(C)(4)(c) for the on-road portion of the rules. The EPA granted the waiver on November 14, 2001 (66 FR 57197), as part of EPA's approval of the SIP revision. Subsequent to this adoption, the 77th Legislature, 2001, passed House Bill (HB) 2912, Article 15, which amended the Texas Clean Air Act (TCAA), §382.039(g) - (i) (subsequently renumbered as §382.202(j), (o), and (p)) to restrict the commission

from requiring distribution of LED as described in the revised SIP prior to January 1, 2005, and to allow the commission to consider, as an alternative method of compliance with LED standards, fuels to achieve equivalent emission reductions. In September 2001 the commission adopted amendments to the LED rules implementing the changes required by HB 2912, Article 15, and included new rules allowing the use of alternative emission reduction plans (AERPs) to demonstrate compliance with the LED control requirements. At the direction of the EPA and in order to reduce nitrogen oxides (NO_x) emissions necessary for the Houston/Galveston/Brazoria (HGB) area to demonstrate attainment with the one hour ozone national ambient air quality standards (NAAQS), these amendments also limited the coverage area of the LED rules from statewide to those counties previously included in the regional air pollution control strategy for the HGB nonattainment area. On March 9, 2005, the commission adopted revisions to the LED rules, extending the initial compliance date for LED from April 1, 2005, to October 1, 2005, and also strengthening registration requirements and improving the rules' enforceability, and submitted them as a SIP revision to the EPA on March 23, 2005. This action was in response to an August 2004 petition by the Texas Petroleum Marketers and Convenience Store Association for rulemaking to extend the compliance date for LED to October 1, 2006, and to June 1, 2007, for the ultra low sulfur requirement. Subsequently, the EPA raised concerns with certain provisions of the revised rules that were problematic in regard to EPA's approval of the rule and SIP revision. Under the LED rules adopted in March 2005, the AERPs were required to be approved by both the executive director and the EPA. The EPA had determined that the commission must submit the AERPs in the form of a SIP revision in order to obtain EPA approval, requiring public review of each AERP. However, many of the diesel fuel producers considered their AERPs to be confidential business information. Furthermore, the commission would also be required to submit a new SIP revision any time a producer amended its AERP. On April 26, 2006, the commission adopted revisions to the LED rules to address the EPA's issues with the rules adopted in March 2005, including the issues raised by EPA regarding its consideration of AERPs as allowed under §114.318. The April 2006 revisions amended §114.318 to establish a method by which all AERPs could be approved by the executive director and the EPA without a SIP revision and specified that all previously approved AERPs would expire December 31, 2006. Producers wishing to use an AERP for compliance with the LED rules were required to submit an AERP under the new protocol by no later than November 15, 2006, to be approved before December 31, 2006. In February 2006 the executive director also approved an AERP for producers of biodiesel blends allowing them to blend biodiesel with LED compliant diesel fuel in the 110 central and eastern Texas counties affected by the LED regulation until December 31, 2006. The AERP for producers of biodiesel blends was issued to provide the producers of biodiesel blends sufficient time to complete the testing of their biodiesel blended formations that is necessary to be approved by the executive director in accordance with §114.315 as alternative diesel formulations for LED. Under the current LED regulations, only those biodiesel blended formulations that were approved by the executive director as an alternative diesel formulation for LED in accordance with the testing provisions specified under §114.315 could be used for compliance with the LED regulations after the December 31, 2006, expiration date. As of December 8, 2006, the executive director had not yet received testing documentation sufficient to approve a biodiesel blended alternative diesel formulation for compliance with the LED regulations.

The commission adopts in this rulemaking a revision to Chapter 114: Control of Air Pollution from Motor Vehicles, Subchapter H: Low Emission Fuels, Division 2: Low Emission Diesel, §114.318. Specifically, the commission revises §114.318(c) to extend the December 31, 2006, expiration date for all AERPs approved by the executive director prior to December 16, 2005. The adopted revision extends the expiration date by one year to December 31, 2007, in order to provide producers of biodiesel blends additional time to complete testing necessary to ensure compliance with the LED regulations under Chapter 114, Subchapter H, Division 2.

SECTION DISCUSSION

The adopted change to §114.318(c) amends the expiration date of all AERPs approved by the executive director prior to December 16, 2005, by extending the expiration date by one year from December 31, 2006, to December 31, 2007, and applies this new expiration date to all AERPs approved by the executive director prior to May 17, 2006. The May 17, 2006, date is the effective date of the LED regulations adopted by the commission on April 26, 2006. This adopted change provides producers of biodiesel blends additional time to complete the necessary testing to ensure compliance with the LED regulations. In addition, the adopted change provides diesel producers additional time to finalize AERPs as well. The adopted change to §114.318(c) also removes the exception that allowed a producer operating under an AERP that was attempting to obtain verification under the EPA's Environment Technology Verification Program and EPA's Office of Transportation and Air Quality's Voluntary Diesel Retrofit Program to continue to operate under their AERP for a limited time beyond December 31, 2006. The adopted one year extension provides sufficient time for producers that had met the exception conditions specified under §114.318(c)(1) - (4) to complete the EPA verification process.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted amendment to §114.318 considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific purpose of the adopted amendment to §114.318 is to provide producers of biodiesel blends additional time to complete the necessary testing to ensure compliance with the LED regulations. In addition, the change will provide diesel producers additional time to finalize alternative emission reduction plans as well. The amendment does not specifically protect human health or the environment. Therefore, the amendment to §114.318 does not constitute a major environmental rule, and thus is not subject to a formal regulatory analysis.

In addition, the adopted amendment to 30 TAC Chapter 114, §114.318 is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rulemaking does not meet any of the four applicability requirements. Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a

standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, this rulemaking action, which is designed to extend the expiration date of approved alternative emission reduction plans, does not exceed an express requirement under state or federal law. Furthermore, there is no contract or delegation agreement that covers the topic that is the subject of this action. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.012, 382.017, 382.019, and 382.202. Therefore, the amendment to §114.318 does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor is adopted solely under the general powers of the agency.

Based on the foregoing, this adopted rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact assessment for the adopted rulemaking action under Texas Government Code, §2007.043. The specific purpose of this revision is to extend the December 31, 2006, expiration date for all AERPs approved by the executive director before May 17, 2006, by one year to December 31, 2007, to allow producers of biodiesel blends additional time to complete the necessary testing to ensure compliance with LED regulations and thus help bring the State's nonattainment areas into compliance with the air quality standards established under federal law as NAAQS for ozone. The adopted amendment does not place a burden on private, real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adoption also does not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted amendment does not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined the adopted rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.),* and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and has determined that the adopted amendment is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The adopted rulemaking ensures that the amendment complies with 40 Code of Federal Regulations (CFR) Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

PUBLIC COMMENT

Public hearings were held on the proposed rules on February 15, 2007, in Arlington; on February 20, 2007, in Houston; and on February 22, 2007, in Austin. The comment period closed on March 2, 2007. The commission received comments from City of Dallas (Dallas), Earth Biofuels, Green Earth Fuels on behalf of the Biodiesel Coalition of Texas (BCOT), Good Company Associates on behalf of the National Biodiesel Board, National Biodiesel Board (NBB), Organic Fuels, Superneighborhood #22 Transportation Task Force (Superneighborhood #22), United States Environmental Protection Agency Region 6 (EPA), and three individuals.

RESPONSE TO COMMENTS

Earth Biofuels, BCOT, EPA, Good Company Associates, Organic Fuels, and NBB generally supported the adoption of the amendment as proposed. Dallas and two individuals generally opposed adoption of the amendment.

Earth Biofuels, BCOT, Good Company Associates, Organic Fuels, and NBB requested the commission to extend the expiration date until the EPA completes its Collaborative Biodiesel Test (CBT) program, communicate the results of the testing to states, and issues guidance based on the results. Good Company Associates commented that EPA estimates that it could take 18 to 24 months to complete the testing and come to a final conclusion that they will use to advise states. NBB commented that EPA has already informed CBT program participants that the study will take 18 months to complete. Dallas commented that the biodiesel industry should be expediting the testing and approval of alternative diesel formulations and that the continued delays and extensions on a final resolution on the use of biodiesel in Texas prolong decisions on Dallas' clean air purchasing strategies. Dallas further commented that the biodiesel industry should have resolved this issue within the timeframe specified by the commission in earlier rulemaking.

The commission will consider the final results of the EPA's CBT program when it is completed. However, the commission does not believe it is appropriate to extend the AERP expiration date beyond December 31, 2007, since some of the counties included in the LED coverage area must demonstrate attainment with eight-hour national ambient air quality standards for ozone by December 31, 2007. The commission has approved an alternative diesel fuel formulation for a biodiesel blend that can be used by producers and importers of biodiesel blends for compliance with the LED rules. Producers using the approved biodiesel blend formulation are no longer limited by the provisions of the AERP for producers of biodiesel blends and may produce this fuel for use in any Texas county affected by the LED rules. The commission also believes that further testing as specified under §114.315(c) or (d) of the LED rules on other biodiesel blend formulations with or without additional additives may result in the approval of additional biodiesel blended alternative diesel formulations for LED before the AERP for producers of biodiesel blends expires on December 31, 2007. The commission made no changes to the rules in response to these comments.

Dallas commented that the provision in the TxLED rule that allows producers to meet the standard through an emission reduction plan is a concern because it allows producers to sell diesel that does not reduce nitrogen oxide. Dallas further commented that its position is that credits should not be used to attain compliance but that true NO_x reduction should be the goal.

The commenter is requesting an action that is beyond the scope of this rulemaking, as comments on other subsections of §114.318, including those relating to the use of credits to attain compliance with the TxLED regulations, were specifically not requested in the proposed rules that were published in the January 26, 2007, issue of the *Texas Register* (32 TexReg 279). The commission is required under the provisions of HB 2912, Article 15, (77th Legislature, 2001) to consider alternative methods of compliance with the TxLED standards to achieve equivalent emission reductions. The commission made no changes to the rules in response to these comments.

Organic Fuels commented that additive costs of an additional $0.02 to $0.05 per gallon for a B20 (20% biodiesel) compliance scenario are not viable from a market standpoint. Organic Fuels further commented that an additive-based strategy is simply not a viable one for a fuel that's attempting to compete in a pretty stilted market. Dallas acknowledged the recent approval of an additive based alternative diesel formulation for biodiesel blends and stated that Dallas will begin purchasing this product in the next few weeks, trusting that biodiesel containing this additive will not cause or contribute to the ozone problem in the DFW area.

The commission believes that the market will determine the most economical way of complying with the LED requirements. If an additive's cost or supply is at issue, producers and importers affected by the LED requirements have other compliance options. In addition, further testing of biodiesel blend formulations with or without additional additives may result in the approval of biodiesel blended alternative diesel formulations for LED that have little or no additional cost per gallon of the biodiesel blended fuel. The commission made no changes to the rules in response to these comments.

Superneighborhood #22 commented that the proposed revisions to the State Implementation Plan under 2006-030-SIP-NR relating to the Houston-Galveston-Brazoria (HGB) Reasonable Further Progress (RFP) SIP Revision were not entirely about the need for more time to clean the air, but in reality about upcoming highway expansion and development projects being placed in jeopardy by the region's impending loss of future federal funds for those projects. Superneighborhood #22 further commented that the reward for failure should not be granting the responsible agencies additional time to comply with federal standards while allowing the populace to continue suffering detrimental effects to health and quality of life. Superneighborhood #22 stated that the commission should act responsibly to require the full evaluation of, and be actively in support of, alternative options such as the twin-tunnel IH 45 proposal that could significantly improve the Houston region's air quality.

The commenter is requesting an action that is beyond the scope of this rulemaking, as changes relating to the Houston-Galveston-Brazoria (HGB) Reasonable Further Progress (RFP) SIP Revision were not addressed in the proposed rules that were published in the January 26, 2007, issue of the *Texas Register* (32 TexReg 279). These comments will be addressed in the response to comments for SIP Revision Project Number 2006-030-SIP-NR. The commission made no changes to the rules in response to these comments.

One individual commented that lawmakers should be accountable to their constituents rather than the big industries who contribute so heavily to their campaigns and that until meaningful campaign reform laws are enacted, our government would continue to cater to those big businesses that put them into office.

The commenter is requesting an action that is beyond the scope of this rulemaking, as changes to campaign reform laws were not addressed in the proposed rules that were published in the January 26, 2007, issue of the *Texas Register* (32 TexReg 279). The commission made no changes to the rules in response to these comments.

One individual commented that all of the oil companies and petrochemical companies have been very profitable recently and yet they say they can't afford to upgrade the production equipment to reduce pollution, and instead of requiring these corporate neighbors to be responsible for their own byproducts, they are given tax breaks and passes on cleaning up their messes. The individual further commented that "this dance we have been doing with industry has to come to an end" and that "the polluting companies should be held to the same standards" as any individual that would be fined for dumping garbage into the air or water.

The commission is required under the provisions of HB 2912, Article 15, (77th Legislature, 2001) to consider alternative methods of compliance with the LED standards to achieve equivalent emission reductions. The extension of the expiration date by one year to December 31, 2007, only provides producers of biodiesel blends additional time to complete testing necessary to ensure compliance with the LED regulations, it does not exempt these producers from the same requirements that producers and importers of petroleum diesel fuel must also meet. The commission made no changes to the rules in response to these comments.

The EPA commented that it does not oppose the removal of the exception in §114.318(c) regarding producers that had begun the verification process. The EPA also stated that in order for EPA to approve this amendment as part of the SIP, the commission will need to provide documentation that the extension is consistent with attainment of the national air quality standards and other requirements of the Clean Air Act and the Texas SIP.

The commission appreciates the support for this removal. The commission's emissions modeling of the benefits from the LED rules assumes that approximately 2.9 billion gallons of on-road and non-road diesel fuel per year is used in the 110-county area affected by the LED rules. Based on information provided by the Texas Department of Agriculture's Fuel Ethanol and Biodiesel Production Incentive Program, the commission estimates that the current biodiesel production in Texas is approximately 55 million gallons of neat biodiesel, known as B100 (i.e., 100% biodiesel), per year. Therefore, based on the estimated current annual B100 production in Texas, the commission estimates that the maximum current potential market share for B20 biodiesel/diesel fuel blends from Texas producers may only be approximately 9% of the 110-county on-road and non-road LED market. Assuming a 2% increase in NO_x emissions using a B20 blend of biodiesel with LED as compared to unblended LED, the commission estimates that the maximum adverse impact would only be a 5% reduction in the total number of tons of NO_x emissions reduced per day under the LED rules. This impact on emissions will only occur for the one year length of the extension.

Therefore, the commission believes that the extension of the AERP expiration date to December 31, 2007, is consistent with attainment of the national air quality standards and other requirements of the Clean Air Act and the Texas SIP because the analysis of the current production of biodiesel in Texas indicates that the amount of biodiesel currently available for blending with LED for use in the nonattainment areas and the other affected counties is not significant and will not have a significant impact on the NO_x emission reductions attributed to the LED rules in these areas.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of LED as described in the SIP is not required prior to February 1, 2005.

The adopted amendment implements Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.019, and 382.202.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701828
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 31, 2007
Proposal publication date: January 26, 2007
For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.33

The General Land Office (GLO) adopts amendments to 31 TAC §15.33 relating to Certification Status of Nueces County Dune Protection and Beach Access Plan (Plan) with changes to the text as proposed in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9207). The changes to the text as proposed add new subsections (h) through (j) to address clarifications provided by Nueces County to address in part some of the public comments received concerning the Plan amendments.

The GLO adopts amendments to 31 TAC §15.33 to the certification status of the Plan, adopted on August 25, 1995, and amended by order of the Commissioners' Court of Nueces County, Texas (County), on October 23, 1996 (1996 Plan). The amendments to 31 TAC §15.33 add a new subsection (f) to certify as consistent with state law the amendments to the Nueces County Plan that were adopted by the Nueces County Commissioners' Court on December 7, 2005 (2005 Plan Amendments). In addition, a new subsection (g) is added to certify as consistent with state law a variance from the requirements of 31 TAC §15.6(f)(3) in the County's Plan that allows a permittee to alter or pave the ground in the area between 350 feet and 200 feet landward of the vegetation line for recreational amenities such as pools separate from habitable structures, so long as residential or commercial structures are located at least 350 feet landward from the line of vegetation and the applicant demonstrates that every attempt has been made to minimize the use of impervious surfaces in the area between 350 feet and 200 feet landward of the vegetation line. New subsection (h) establishes a rebuttable presumption that the permittee has followed the mitigation sequence requirements in 31 TAC §15.4(f) for avoidance and minimization of effects on dunes and dune vegetation, if the applicant complies with the special erosion and flood protection requirements for dune protection permits specified in subsection (g). New subsection (i) provides that the special erosion and flood protection requirements specified in subsection (g) do not apply to a previously platted subdivision lot that was the subject of a prior dune protection permit, or that was part of a master planned development, the plans for which were previously approved and adopted by the Commissioners' Court, provided that the construction authorized by a new permit is consistent with the prior permit or master plan. Finally, new subsection (j) provides that the special erosion and flood

protection requirements specified in subsection (g) shall not apply to areas within the jurisdiction of the City of Port Aransas.

The 1996 Plan may be viewed on the County's web site at: http://www.co.nueces.tx.us/pw/dunes/beachmanagement.asp. Copies of the local government dune protection and beach access plan and any amendments to the Plan are available from Nueces County Department of Public Works, 901 Leopard St., Suite 103, Corpus Christi, Texas 78401-3697, phone number (361) 888-0490, and from the General Land Office's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 - 15.12, §§15.21 - 15.36), a local government with jurisdiction over Gulf Coast beaches must submit its dune protection and beach access plan and any amendments to such a plan to the GLO for certification. 31 TAC §15.3(o). The GLO reviews a local beach access and dune protection plan and, if appropriate, certifies that the plan is consistent with state law by adoption or amendment of a rule as authorized in Texas Natural Resources Code §§61.011(d)(5), 61.015(b), and 63.054(c). The certification by rule reflects the state's approval of the plan, but the text of the plan is not adopted by the GLO as provided by 31 TAC §15.3(o)(4).

Nueces County is a coastal county consisting of areas bordering Redfish Bay, Corpus Christi Bay, and the Laguna Madre. The County also borders the Gulf of Mexico to the southeast, extending from the southernmost boundary of Aransas County south to the northernmost boundary of Kleberg County. The County includes barrier islands consisting of a portion of North Padre Island accessible from the east via the John F. Kennedy Causeway (Park Road 22) and Mustang Island, which is accessible from the east via ferry at Port Aransas.

The Gulf beaches and adjacent areas governed by the Plan are those unincorporated areas within the County and the Gulf beaches within the corporate limits of the City of Corpus Christi with respect to administration of the Dune Protection Act. The County has delegated authority to the City of Port Aransas for administration of the Dune Protection Act pursuant to Texas Natural Resources Code §63.011(a), but has not delegated such authority to the City of Corpus Christi. With respect to administration of the Open Beaches Act, the Gulf beaches within the corporate limits of the City of Corpus Christi are governed by the City of Corpus Christi Dune Protection and Beach Access Plan (City's Plan), certified as consistent with state law in 31 TAC §15.31. The Gulf beaches within the corporate limits of the City of Port Aransas are governed by the City of Port Aransas Dune Protection and Beach Access Plan, certified as consistent with state law in 31 TAC §15.24.

THE 2005 NUECES COUNTY PLAN AMENDMENTS

On December 7, 2005, the Commissioners' Court of Nueces County adopted amendments to the 1996 Plan and submitted those amendments to the GLO with a request for certification. The 2005 Plan Amendments included, among other changes, amendments relating to the Designation of Access Ways, Parking Areas, and Beaches Closed to Motor Vehicles. A detailed designation of the beach access ways can be found in Section VI(B)(1) of the Plan as amended. It also included amended provisions concerning dune protection permit application fees, provisions establishing a building set-back line, amendments to traffic regulations, and changes in criminal penalties for prohibitions against littering.

The approved changes to Section II (J) of the Plan allow the County Commissioners' Court to establish reasonable fees for dune protection permit applications. The amendment removes language that established the specific amounts for the fees in the Plan. This proposed plan amendment is consistent with state law. Texas Natural Resources Code §63.053 specifically authorizes the commissioners' court to require a reasonable fee to accompany an application for a dune protection permit. Review and approval by the GLO of the reasonableness of fees charged for dune protection permit applications is not required by the Dune Protection Act or the Beach/Dune Rules.

The County approved changes to Section VII of its Plan relating to Beach Traffic Orders to provide that traffic regulations adopted in the Plan apply only to Gulf beaches within County parks and County property. This approved plan amendment is consistent with state law. Texas Natural Resources Code §61.122(a) specifically authorizes the commissioners' court of a county bordering on the Gulf of Mexico or its tidewater limits, to regulate motor vehicle traffic on any beach within the boundaries of the county. The limitation of traffic regulations to County-owned parks and property does not impair the existing right of the public to use and have access to and from the public beach.

The County adopted changes to Section XI of its Plan to increase the penalty for violation of the prohibition against littering in Section VI (F) of the Plan by doubling the fines. For a first offense, a fine of $100 to $200 is authorized. For a second offense, a fine of $200 to $400 is authorized. For a third or subsequent offense, a fine of $400 to $1,000 is authorized. This approved plan amendment is consistent with state law. Texas Natural Resources Code §61.122(a) specifically authorizes the commissioners' court of a county bordering on the Gulf of Mexico or its tidewater limits, to prohibit littering of any beach within the boundaries of the county and to define the term "littering."

The County also adopted changes to Section III (I) of the Plan concerning General Erosion and Flood Protection Requirements. Specifically, the County proposed to add new subsection "i" to require residential and commercial structures permitted after May, 2000, to be located at least 350 feet landward of the vegetation line unless no practicable development alternatives are possible. The amendment also added new subsection "j" to restrict development permitted after May, 2000, in the area between 350 feet and 200 feet landward of the vegetation line to recreational amenities such as pools and picnic areas. In any case, applicants must demonstrate that every attempt has been made to minimize use of impervious surfaces in this zone.

The new requirement that residential and commercial structures be located at least 350 feet landward of the line of vegetation imposes a stricter standard than that required by the Open Beaches Act (OBA), Texas Natural Resources Code §§61.001 - 61.026; the Dune Protection Act (DPA), Texas Natural Resources Code §§63.001 - 63.181; and the Beach/Dune Rules. Local governments are permitted to adopt standards that meet or exceed the requirements of state law. Therefore, the provisions of new subsection "i" are certified as consistent with the OBA, the DPA, and the Beach/Dune Rules.

However, §15.6(f)(3) of the Beach/Dune Rules concerning construction in eroding areas allows a permittee to alter or pave only the ground within the footprint of the habitable structure only if

the alteration or paving will be entirely undertaken, constructed, and located landward of 200 feet from the line or vegetation or landward of an eroding area boundary established in the local beach/dune plan. The definition of "habitable structure perimeter or footprint" at §15.2(37) of the Beach/Dune Rules specifically excludes ground-level paving, landscaping, open recreational facilities (for example pools and tennis courts), or other similar features. To the extent that new subsection "j" allows a permittee in an eroding area to alter or pave the ground in the area between 350 feet and 200 feet landward of the vegetation line for recreational amenities such as pools and picnic tables outside the footprint of a habitable structure, it is not consistent with §15.6(f)(3) of the Beach/Dune Rules.

VARIANCE

A local government requesting certification of a plan or plan amendment that includes a variance of any requirement or prohibition in the GLO's Beach/Dune Rules is required by 31 TAC §15.3(o)(6) to submit to the GLO a reasoned justification demonstrating how the variance provides equal or better protection of dunes, dune vegetation, and public access to and use of the public beach than is provided by the Beach/Dune Rules.

The GLO conducted several field inspections of critical dune areas in the County and considered the Memorandum of Response dated July 26, 2006, from Nueces County in support of its 2005 Plan Amendment authorizing the construction of recreational amenities separate from habitable structures between 350 feet and 200 feet landward of the vegetation line. The reasoned justification submitted by the County suggests that it provides an equal or better level of protection of dunes, dune vegetation, and public access to and use of the beach in that: (1) the County has in place a more stringent standard, 350 feet landward of the line of vegetation for all construction, than is mandated by the Beach/Dune Rules; (2) much of the construction that would be allowed seaward of the 350' line are small structures such as pools, decks and gazebos; (3) each applicant would be evaluated on a case-by-case basis and would have to demonstrate an attempt to avoid or minimize the amount of impervious surface, thereby minimizing impacts to critical dunes, dune vegetation and dune hydrology; (4) most pools and back yard amenities would have some type of irrigation system to encourage vegetative growth thereby reducing maintenance from wind blown sand; and (5) these types of allowable structures would not be exempt from mitigation requirements. The primary dune complex on Mustang and North Padre Islands extends as far landward as 350 feet from the line of vegetation, and Nueces County represented that the protection of the primary dune complex is critical to the success of their dune protection efforts.

The GLO also considered action by the County on April 4, 2007, approving the recommendations of the Nueces County Beach Management Advisory Committee contained in a memorandum dated March 29, 2007, pursuant to a request by the GLO for clarifications responding to public comments regarding application of the special erosion and flood protection requirements. The memorandum approved by the County provides as follows:

"(1) Due to decades-old development of Mustang and North Padre Islands, some lots have been previously platted and have received a dune permit or master plan authorization to develop. The Committee has continuously expressed its intent to exempt previously platted subdivision lots that were the subject of a previous dune permit or master plan development from the 350 rule. So far as the future development remains consistent with the prior permit or master plan adopted by the Commissioners Court, the Committee confirms that this exemption should continue to apply. This should be the Commissioner Court's continuing intent, and action, with regard to those properties.

"(2) As noted above in the "Background" section of this memorandum, the 350 rule arose out of a procedural application of the beach/dune rules, primarily the requirement that impacts to dunes be avoided to the maximum extent practicable. Under this procedural rule, if an applicant stays landward of 350 feet from the line of vegetation, the Committee recognizes a rebuttable presumption is established that the applicant has adequately avoided and minimized the impacts on dunes and dune vegetation for the entire property. In certain instances, this general presumption may not be appropriate. However, this approach may also allow for more development activity landward of 350 feet.

"(3) The Committee has applied its procedural rule requiring limitations on structures seaward of 350 feet only to the areas of Nueces County over which the County currently has dune protection authority. These areas exempt Mustang Island State Park, the North Padre Island seawall area, and the City of Port Aransas. Therefore, it is urged that the Commissioner's Court express that it is not the County's intention to apply the 350 rule to areas within the jurisdiction of the City of Port Aransas."

The reasoned justification submitted by the County in support of its request for approval of Plan amendments in new subsection "j" that allows a permittee to alter or pave the ground in the area between 350 feet and 200 feet landward of the vegetation line for recreational amenities such as pools separate from habitable structures demonstrates that the 2005 Plan Amendments will advance the public interest and provide an equal or better level of protection of dunes, dune vegetation, and public access to and use of the beach. The clarification regarding establishment of a rebuttable presumption that the permittee has followed the mitigation sequence requirements in 31 TAC §15.4(f) for avoidance and minimization of effects on dunes and dune vegetation demonstrates that the variance will also advance the public interest and provide an equal or better procedure for evaluating impacts in an application for a dune protection permit. The variance affords an appropriate level of protection for the natural beach/dune system and limits the application to a case-by-case determination with the protection of the beach/dune system, including appropriate mitigation procedures.

Accordingly, the GLO hereby certifies as consistent with state law the County's 2005 Plan Amendment with a variance from the provisions of §15.6(f)(3) of the Beach/Dune Rules that allows a permittee to alter or pave the ground in the area between 350 feet and 200 feet landward of the vegetation line for recreational amenities such as pools separate from habitable structures, so long as residential or commercial structures are located at least 350 feet landward from the line of vegetation and the applicant demonstrates that every attempt has been made to minimize the use of impervious surfaces in the area between 350 feet and 200 feet landward of the vegetation line.

Although the provisions of new subsections "i" and "j" of the County's Plan address and establish a rebuttable presumption of compliance with the first two steps of the dune mitigation sequence established in §15.4(f) of the Beach/Dune Rules (avoidance of impacts or minimization of impacts by limiting its degree or magnitude), the special erosion and flood protection requirements do not otherwise exempt a permit applicant from compliance with compensatory mitigation requirements for unavoidable adverse effects on dunes and dune vegetation.

SUMMARY AND RESPONSE TO COMMENTS

The GLO conducted a public hearing to receive public comment on the proposed amendments to 31 TAC §15.33 at the Briscoe King Pavilion, Padre Bali Park, 15820 Park Road 22 Corpus Christi, Texas, on January 31, 2007. In addition to comments received at the public hearing, numerous written comments were received during the thirty-day comment period specified in the notice of proposed rulemaking published in the November 10, 2006 issue of the Texas Register. The GLO gave due consideration to all comments received by the agency during the thirty day comment period and at the public hearing.

Representatives of the following organizations provided comments opposed to the proposed rulemaking, largely because of the expressed need for clarification as to how the rules would be applied to proposed construction within the City of Port Aransas and the City of Corpus Christi. The City of Port Aransas; The City of Corpus Christi; Naismith Engineering; Braselton Homes / Braselton Land Ventures; PV Mustang Island Group, LLC; Urban Engineering; Newport Realty RE/MAX; Milan & Co., P.C.; Facey Enterprises VN., Ltd, a Delaware Corporation; Sea Oats Development Group; Port Aransas Realty; Grosse Real Estate; and several La Concha Estates lot owners.

Several commenters objected to the requirement that residential and commercial structures be located at least 350 feet landward of the natural line of vegetation, unless no practicable alternative exists, in that the prohibition may constitute a taking that requires real property owners to be compensated as provided by federal and state constitutions, as well as Chapter 2007 of the Texas Government Code. The GLO disagrees with the commenters. In the controlling legal authority on the issue, Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1991), the U.S. Supreme Court found a constitutional taking where a set back line "denies all economically beneficial or productive use of land." The regulation proposed by the County allows a property owner to construct between 350 feet and 200 feet landward of the line of vegetation if it can be shown that "no practicable development alternatives are available." In addition the regulation allows some beneficial use of the property seaward of the line for recreational amenities. Therefore, there is no unconstitutional taking. Under Chapter 2007 of the Texas Government Code, a statutory taking action requiring compensation arises only where a regulation results in a reduction of at least 25% in the market value of affected private real property. The County regulation by its terms allows an exception to the prohibition of construction between 350 feet and 200 feet landward of the line of vegetation if it can be shown that "no practicable development alternatives are available." The definition of the term "practicable" in §15.2(55) of the Beach/Dune Rules allows a local government to consider the cost of implementing a technique such as the set-back provisions in determining whether it is "practicable" in a particular application for development. In applying its regulation, the County could determine on a case-by-case basis to permit construction of residential and commercial structures between 350 feet and 200 feet landward of the line of vegetation if it caused severe and unavoidable economic impacts and thus avoid a statutory taking requiring compensation. No change was made based on these comments.

Several commenters objected to the retroactive application of the amendment, specifically, the provision that subjected residential and commercial structures permitted after May 2000 to be located 350 feet landward of the line of vegetation. These comments were provided by several landowners with previous construction on the affected properties, individuals representing the real estate industry, individuals representing architectural/engineering firms, and the cities of Corpus Christi and Port Aransas representatives. The commenters stated that the requirement would create a number of non-conforming structures, create confusion applying for future construction permits, and generally not provide any additional protection to the public and dune structures since mitigation measures had already been implemented under the original permits. The commenters said that the retroactive nature of the rule was seen to be in violation of the provisions of Chapter 245, Texas Local Government Code, that prohibits a local government from applying new regulations to previously permitted construction. GLO disagrees with the commenters' objection to the retroactive application of the new regulations. Section 5 of HB 1704, which enacted Chapter 245, Local Government Code (the state's vesting law), provides that the chapter does not apply to a permit, order, rule, regulation, or other action issued, adopted, or undertaken by a municipality, a county, another political subdivision, the state, or an agency of the state in connection with Chapter 61 (OBA) and Chapter 63 (DPA), Natural Resources Code. However, in response to these comments, GLO sought clarification from the County as to its intention regarding the application of the new requirements to previously platted subdivisions, the subject of an expired permit or master plan. The County affirmed its intention to exempt previously platted subdivision lots that were the subject of a previous dune permit or master plan development from the 350-foot rule, provided that the future development remains consistent with the prior permit or master plan adopted by the Commissioners Court. The text of the certification rule was changed in response to public comment to reflect this exemption.

One commenter objected to the 350-foot set-back line on the basis that while the previous voluntary application of the line worked satisfactorily in most cases for large tracts of land, the practical application of the set-back line would prevent permitting of smaller properties and infrastructure projects. The GLO disagrees with the commenter. Specifically, the developer of a smaller tract has the ability to demonstrate that "no practicable development alternatives are possible," in order to allow residential or commercial structures less than 350 feet landward of the vegetation line. In addition, the new regulation allows the construction of infrastructure such as recreational amenities in the area 350 feet and 200 feet landward of the line of vegetation. Finally, Nueces County clarified its intent to exempt previously platted subdivision lots that were the subject of a previous dune permit or master plan development from the 350-foot rule, provided that the future development remains consistent with the prior permit or master plan adopted by the Commissioners' Court. This exemption will allow the development of smaller tracts that were previously permitted. The text of the certification rule was changed in response to public comment to reflect this exemption.

The Cities of Port Aransas and Corpus Christi and one commenter objected to the application of the new requirement that residential and commercial structures be located at least 350 feet landward of the line of vegetation to accreting areas. Noting that at least half of the area affected by the new requirements on Mustang and Padre Islands were in stable or accreting areas, these commenters stated that the new requirements should be applicable only to construction in eroding areas. The GLO disagrees with the commenters. Local governments are permitted to adopt standards that meet or exceed the requirements of state law. The new requirement that residential and commercial struc-

tures be located at least 350 feet landward of the line of vegetation imposes a stricter standard than that required by the Open Beaches Act (OBA), Texas Natural Resources Code §§61.001 - 61.026; the DPA; and the Beach/Dune Rules. Additionally, even though all of the area subject to the provisions of the proposed amendment may not be eroding areas, the local government is justified in adopting the stricter standard. Documented relative sea level rise data for the Texas coastline show that at the current rate, the sea level will rise one meter this century aggravating erosion even in stable and accreting areas. (Innovations Report - Forum for Science, Industry and Business, Sept. 11, 2004, Look at Past Sea Level Rise Points to Troubling, Future by Dr. John Anderson). Extreme storm events affect all Gulf fronting beaches including stable and accreting beaches. Fore dune ridges on northern Mustang Island were cut back 150 - 300 feet by Hurricane Carla during 1961. During Hurricane Alicia (1983), vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas (Bureau of Economic Geology Circular 85-5). No change was made based on these comments.

Several commenters argued that Nueces County had in part justified the 350-foot set-back as a predetermined measure for avoidance and minimization of dune impacts, and therefore additional avoidance and minimization beyond 350 feet was not necessary. The GLO conditionally agrees with the commenters. If an applicant stays landward of 350 feet from the line of vegetation, a rebuttable presumption is established that the applicant has adequately avoided and minimized the impacts on dunes and dune vegetation for the entire property. This approach may facilitate development activity landward of 350 feet. Significant time and resources often are devoted by an applicant to development of the portion of dune mitigation plans to demonstrate avoidance and minimization of dune impacts. The rebuttable presumption streamlines the permitting process where an applicant has complied with the 350-foot rule. In certain instances, however, this general presumption may be rebutted if the County determined that the application for the proposed construction authorized a prohibited activity under §15.4(c) of the Beach/Dune Rules or failed to meet the technical standards for material weakening of dunes in §15.4(d) of the Beach/Dune Rules. The text of the certification rule was changed in response to public comment to reflect this presumption.

Several commenters stated that the proposed Nueces County amendment interferes with the authority of the City of Port Aransas and the City of Corpus Christi to regulate beachfront construction and that these municipalities, and not County, has jurisdiction under state statute for preventing the likelihood of structures ultimately ending up on the public beach within their respective jurisdictions. The GLO disagrees with the commenters. Municipalities do in fact have authority within their corporate limits and extraterritorial jurisdiction pursuant to Texas Natural Resources Code §61.015(a) to adopt and apply ordinances for preserving and enhancing access to and use of public beaches. However, in findings of fact in §63.001(7) of the Dune Protection Act, the legislature has determined that "vegetated stabilized dunes help protect state-owned beaches and shores by protecting against erosion of the shoreline." The protective function of dunes with respect to public beaches recognized by the legislature can be taken into account by the County and the GLO in determining the public benefit of the proposed regulation. Counties have primary jurisdiction under the DPA (Texas Natural Resource Code §63.011(b)) for dune protection permitting and may delegate all or part of this authority to municipalities. Nueces County has delegated dune protection authority to the City of Port Aransas, but has not made a similar delegation to the City of Corpus Christi. However, pursuant to action on April 4, 2007, approving the recommendations of the Nueces County Beach Management Advisory Committee contained in a memorandum dated March 29, 2007, the County expressed its intention that the proposed Plan amendments concerning the 350-foot rule are not effective within the jurisdiction of the City of Port Aransas. The text of the certification rule was changed in response to public comment to reflect this limitation.

One commenter, the City of Corpus Christi and the City of Port Aransas objected to the Nueces County regulations governing beach access, parking, traffic, and littering rules. In their opinion, because of home rule statutes in the State of Texas, this regulatory authority is within the purview of the Cities and not within the authority of the Dune Protection Act or the Beach/Dune Rules. The GLO disagrees with the commenters. The County proposed changes concerning public vehicular access ways in Section VI. B. of the County's Plan specifically state that the provisions are "subject to the terms of approved plans adopted by the cities with appropriate jurisdiction." Also, the County proposed changes to Section VII of its Plan relating to Beach Traffic Orders to provide that traffic regulations adopted in the Plan apply only to Gulf beaches within County parks and County property. Texas Natural Resources Code §61.122(a) specifically authorizes the commissioners' court of a county bordering on the Gulf of Mexico or its tidewater limits, to regulate motor vehicle traffic on any beach within the boundaries of the county. The limitation of traffic regulations to County-owned parks and property does not impair the existing right of the public to use and have access to and from the public beach and does not interfere with the authority of a home rule city. Texas Natural Resources Code §61.122(a) specifically authorizes the commissioners' court of a county bordering on the Gulf of Mexico or its tidewater limits, to prohibit littering of any beach within the boundaries of the county and to define the term "littering." No change was made based on these comments.

Several commenters, including representatives from the City of Corpus Christi and the City of Port Aransas, said that a substantial loss of taxable assets, and property devaluation would adversely affect the budgets for the cities, school and college districts. Furthermore the general economy would suffer as a result of lost jobs and decreased revenues for construction, development, tourism, and building materials. Representatives from the City of Corpus Christi said that because of these impacts, the proposed rulemaking was subject to §2001.0225 of the Texas Government Code (Regulatory Analysis of a Major Environmental Rule). The GLO disagrees with the commenters. Section 2001.0225(g)(3) defines a "major environmental rule" as " a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." The adoption of the proposed amendments to the certification rule concerning the proposed Nueces County Plan is not intended to adopt the County's regulations. Rather, the GLO reviews a local beach access and dune protection plan and, if appropriate, certifies that the plan is consistent with state law by adoption or amendment of a rule as authorized in Texas Natural Resources Code §§61.011(d)(5), 61.015(b), and 63.054(c). The certification by rule reflects the state's approval of the plan,

but the text of the plan is not adopted by the GLO, as provided by 31 TAC §15.3(o)(4). Further, the economic impact of the County's new regulations may have been overstated by some of the commenters. With respect to the 350-foot building set-back line, there will be no significant increase in the cost of compliance inasmuch as the County had previously implemented a voluntary 350-foot building set-back line in May, 2000, which has been generally observed by individuals and developers. Several large-scale developments that have completed permitting, or are well into the permitting process under the voluntary 350-foot set-back include Bella Vista II, a 6.24-acre tract containing more than 40 building lots, Mustang Island Resort, a 22.96-acre tract containing a multi-story condominium, and The Preserve at Mustang Island, a 137.19-acre tract containing more than 150 building lots. Moreover, developers actually benefit from the regulatory certainty provided by the Plan amendments which establish a rebuttable presumption that the permittee has followed the mitigation sequence requirements in §15.4(f) of the Beach/Dune Rules for avoidance and minimization of effects on dunes and dune vegetation. Finally, the proposed Plan amendment requires residential and commercial structures permitted after May, 2000, to be located at least 350 feet landward of the vegetation line "unless no practicable development alternatives are possible." In applying its regulation, the County could determine on a case-by-case basis to permit construction between 350 feet and 200 feet landward of the line of vegetation if it would otherwise cause severe and unavoidable economic impacts, since "practicable" includes consideration of the cost of implementing the provisions. No change was made based on these comments.

Several commenters including individual landowners, individuals representing the real estate industry, individuals representing architectural/engineering firms, and the City of Port Aransas said it was disputable that the Nueces County justification that the 350-foot set-back provides an equal or better level of protection for the dunes, dune vegetation, and public access to and use of the beach. Most of the comments against the new regulations questioned how well the GLO and County had demonstrated that the new restrictions would offer an improvement in benefits over the existing regulations. The GLO disagrees because it believes that 350-foot set-back provides an equal or better level of protection for the dunes, dune vegetation, and public access to and use of the beach due to: (1) the standard of limiting construction landward of 350 feet of the natural line of vegetation is more stringent than the Beach/Dune rules; (2) construction between 200 feet and 350 feet would be limited to small structures; (3) each application will be evaluated on a case-by-case basis and would have to demonstrate an attempt to minimize or avoid the amount of impervious surface, thereby minimizing impacts to critical dunes, dune vegetation, and dune hydrology; (4) most pools and backyard amenities would have some type of irrigation system to encourage vegetative growth, thereby promoting dune stabilization; and (5) allowable structures would not be exempt from mitigation requirements. Additionally, the GLO believes that the new provisions in the Nueces County amendment would: (1) provide better protection for critical dunes that serve to protect natural resources and public infrastructure, including storm evacuation routes; (2) protect the public's right to access and use the public beach by reducing the likelihood that structures will become located on the public beach due to erosion; (3) clarify changes relating to access ways and traffic orders, thus enhancing public understanding of the requirements; and (4) deter littering by increasing authorized penalties for littering. No change was made based on these comments.

Two commenters, including a representative from the City of Port Aransas, asserted that the proposed Nueces County amendment is not consistent with the Coastal Management Plan. The City objected because the type of development in the City is different than the development in the County. One commenter said the County's amendment was inconsistent with three of the Texas Coastal Management Plan (TCMP) goals, identified as follows: (1) to aid coastal landowners and local governments in using beachfront property in a manner compatible with preserving public and private property, protecting the public's right to benefit from the protective and recreational functions of a healthy beach dune system, conserving the environment, conserving flora and fauna and their habitat, ensuring public safety, and minimizing the loss of life and property due to inappropriate coastal development and the destruction of protective natural features, (2) to foster mutual respect between public and private property owners and to assist local governments in managing the Texas coasts so that the interests of both the public and private landowners are protected, and (3) to provide coordinated, consistent, responsive, timely, and predictable governmental decision making and permitting processes. The GLO disagrees with the commenters. The goals and policies cited by the commenter refer to goals identified by the GLO as a basis for managing and regulating human impacts on the beach/dune system in §15.1 of the GLO's Beach/Dune Rules, and are not goals and policies of the TCMP. The proposed Plan amendment establishing a 350-foot set-back actually furthers the first goal cited by the commenter to "aid coastal landowners and local governments in using beachfront property in a manner compatible with preserving public and private property" by helping to preserve vegetated and unvegetated sand dunes, thus providing a natural protective barrier for adjacent land against the destruction of both private and public property from storm damage from hurricanes such as Hurricane Carla and Hurricane Alicia as previously noted. The proposed amendment further protects "the public's right to benefit from the protective and recreational functions of a healthy beach dune system, conserves the environment, flora and fauna and their habitat, ensuring public safety and minimizes the loss of life and property due to inappropriate coastal development and the destruction of protective natural features" by preserving the natural dune system within 350 feet of the line of vegetation and the natural dune system therein providing a stronger and more vibrant undisturbed dune system. As previously noted, during Hurricane Alicia, vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas attributed in part to the fact that naturally occurring vegetated dunes are stronger than reconstructed dunes due to greater root depths (Bureau of Economic Geology Circular 85-5). The proposed Plan amendments further the second goal cited by the commenter to "foster mutual respect between public and private property owners" and to assist "local governments in managing the Texas coasts so that the interests of both the public and private landowners are protected" by exempting previously platted lots and lots within the City of Port Aransas and also by providing for the construction of certain amenities from 200 feet landward of the line of vegetation to 350 feet landward of the line of vegetation. The application of the new regulation, "unless no practicable development alternatives are possible," ensures that private property rights protected by state and federal constitutions as well as Chapter 2007 of the Texas Government Code are preserved. The proposed Plan amendments provide "coordinated, consistent, responsive, timely, and predictable governmental decision making and permitting processes" by establishing a rebuttable presumption the permittee has followed the

mitigation sequence requirements in §15.4(f) of the Beach/Dune Rules for avoidance and minimization of effects on dunes and dune vegetation. The mitigation sequence requires the applicant to provide substantial material demonstrating "avoidance" and "minimization" and also requires the local government to make findings that the applicant has demonstrated avoidance and minimization. The 350-foot set-back facilitates and streamlines the permitting process on both the local and state level by addressing the first two phases of the mitigation sequence. No change was made based on these comments.

One commenter disagreed with allowing the County to categorically set permit application fees. The GLO disagrees with the commenter because the Plan amendment does not directly result in an increase in application fees, and the Texas Natural Resources Code §63.053 specifically authorizes the County Commissioner's Court to require a reasonable fee to accompany an application for a dune protection permit. Review and approval by the GLO as to the reasonableness of fees charged for dune protection permit applications is not required by the Dune Protection Act or the Beach/Dune Rules. No change was made based on these comments.

One commenter stated that The University of Texas Bureau of Economic Geology's (BEG) erosion-rate data are inaccurate and exaggerate the actual erosion rates by a factor of 100. The same commenter stated that there is no significant erosion occurring on the beaches of Nueces County since at least 1980. The GLO disagrees with this commenter because BEG's erosion rate data have been determined using available historic data, including aerial photos and surveys and newer LIDAR data. BEG uses a documented scientific process that digitizes and integrates historical shorelines so that Gulf shorelines will have data at least every 16 years dating back to the 1950s. The process also uses digital rectification of historical photographs to extract past shoreline positions, airborne topographic LIDAR surveys for acquiring new and future shoreline data, selection of ground topographic transects, and establishment of Global Positioning System (GPS) reference points to support the monitoring. (Texas Shoreline Change Project: http://www.beg.utexas.edu/coastal/intro.htm). The commenter provided only anecdotal evidence that the BEG data are inaccurate and exaggerated, and provided no countering scientifically validated data. The commenter did not cite the effects of major hurricanes such as Hurricane Carla and Hurricane Alicia, which produced profound erosion impacts in Nueces County. No change was made based on these comments.

One commenter said there should be restrictions on driving on the beach because it will aid in development and support property values. The GLO expresses no opinion with regard to these assertions, and also disagrees with the commenter based upon relevancy. The issue before the GLO was whether the Plan amendments as submitted by the County are consistent with the OBA, the Dune Protection Act, and the GLO's Beach/Dune Rules. The Plan amendments as submitted made no changes to vehicular restrictions. No change was made based on these comments.

One commenter stated that exceptions need to be readily accepted to the 350-foot set-back rule, and building in the dunes needs to be accepted. The GLO concurs with the commenter that some exceptions to the 300-foot rule need to be accepted. Some exceptions to the application of the 300-foot rule are needed to ensure the proposed amendment would not impose an unconstitutional taking of private property. The proposed amendment requires residential and commercial structures permitted after May 2000, to be located at least 350 feet landward of the vegetation line "unless no practicable development alternatives are possible." Since "practicable" includes economic impacts, the County could determine on a case-by-case basis to permit construction of residential and commercial structures between 350 feet and 200 feet landward of the line of vegetation if it caused severe and unavoidable economic impacts. The County's regulation provides exceptions, permitting recreational amenities to be built between 350 feet and 200 feet landward of the vegetation line. The GLO disagrees with the commenter's unqualified statement that building in the dunes needs to be accepted. The Dune Protection Act, Chapter 63, Texas Natural Resources Code §63.001 finds " that it is necessary to protect these dunes as provided in this chapter because stabilized, vegetated dunes offer the best natural defense against storms and are areas of significant biological diversity; that vegetated stabilized dunes help preserve state-owned beaches and shores by protecting against erosion of the shoreline; and that different areas of the coast are characterized by dunes of various types and values, all of which should be afforded protection." Impacts to dunes are only allowed, as a permitted action by the authorized local government, after it makes the findings required by §15.4 of the Beach/Dune Rules. No change was made based on these comments.

Several individual commenters wrote or spoke in support of the proposed amendments, and representatives of the following organizations provided comments generally in favor of the proposed rulemaking: Coastal Bend Environmental Coalition; Coastal Bend Group of the Sierra Club; Beach Access Coalition; and Coastal Bend Chapter of Surfriders. One individual representing the Coastal Bend Sierra Club agreed that the new regulations would afford additional protection to the dune system and further limit the impacts of impervious cover. One individual representing an engineering firm cited numerous benefits that would accrue from the increased protection provided under the proposed county plan. No change was made based on these comments.

REASONED JUSTIFICATION AND FACTUAL BASIS

The GLO has determined that adoption of the amendments to 31 TAC §15.33 relating to Certification Status of Nueces County Dune Protection and Beach Access Plan (Plan) is justified by the public benefits that will result from approval of the 2005 Plan amendments. The 2005 Plan amendment concerning removal of language setting specific amounts for dune protection permit application fees in the Plan will allow the County to respond more efficiently to changes in the cost of administering the permits and ensure that such administrative costs are borne by developers and not the general public. The Plan changes relating to access ways and traffic orders provide clarification to the public. The increase in authorized penalties for littering will provide a better deterrence against violations. The Plan amendment concerning the 350-foot construction set-back line will provide better protection for critical dunes that serve to protect natural resources and public infrastructure, including storm evacuation routes, as well as a more efficient method of assessing impacts to dunes from proposed construction. In addition, the Plan amendment protects the public's right to access and use the public beach by reducing the likelihood that structures will become located on the public beach due to erosion.

The adoption of the approval of the 2005 Plan amendments including the variance from the requirements of 31 TAC §12.6(f)(3)

is supported by the reasoned justification provided by the County in the Memorandum of Response dated July 26, 2006, from Nueces County in support of its 2005 Plan Amendment authorizing the construction of recreational amenities separate from habitable structures between 350 feet and 200 feet landward of the vegetation line and the March 29, 2007 memorandum approved by the Commissioners' Court relating to clarifications requested by the GLO regarding application of the special erosion and flood protection requirements. In addition to the information provided by the County, approval of the 2005 Plan amendments providing for a 350-foot construction set-back rule is justified by scientific studies and engineering studies considered by the GLO. For example, foredune ridges on northern Mustang Island were cut back 150 - 300 feet by Hurricane Carla during in 1961. During Hurricane Alicia in 1983, vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas (Bureau of Economic Geology Circular 85-5). This difference is attributed in part to the fact that naturally occurring vegetated dunes are stronger than reconstructed dunes due to greater root depths. (Circular 85-5). Other studies have shown that set-backs can reduce water pollution runoff from impervious surfaces and septic systems and also reduce the adverse impacts on dune and wetland ecology. (J.G. Titus. 1998. Maryland Law Review 57:4, pp. 1279-1399).

CONSISTENCY WITH CMP

The adopted amendment to 31 TAC §15.33 concerning Certification Status of Nueces County Dune Protection and Beach Access Plan is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the CMP. The Land Office has reviewed this adopted action for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable policies are found at 31 TAC §501.26, relating to Policies for Construction in the Beach/Dune System, and §501.27, relating to Policies for Development in Coastal Hazard Areas. With the exception of the variance concerning special erosion and flood protection requirements specified in new subsection §15.33(g), the proposed actions are consistent with the GLO's Beach/Dune Rules, which the Council has determined to be consistent with the CMP. The variance affords an appropriate level of protection for the natural beach/dune system and limits the application to a case-by-case determination with the protection of the beach/dune system, including appropriate mitigation procedures. Consequently, the Land Office has determined that the proposed actions are consistent with applicable CMP goals and policies.

The adopted rulemaking furthers several goals of the CMP identified in 31 TAC §501.12 including: §501.12(1) to "protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs)" by enhancing dune protection; §501.12(2) to "ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone" by providing clarification and certainty for areas where construction of residential and commercial structures are allowed consistent with dune protection; §501.12(3) to "minimize loss of human life and property due to the impairment and loss of protective features of CNRAs" by enhancing the preservation of natural dunes and the protection they provide against destructive storms and erosion; §501.12(5) to "balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone" as discussed in the response to comments; and §501.12(6) to "coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs", as illustrated by the rebuttable presumption that a permittee has followed the mitigation sequence requirements in 31 TAC §15.4(f) for avoidance and minimization of effects on dunes and dune vegetation if the 350-foot set-back rule is observed.

There were no comments from the public or council members on the consistency of the adopted rule during the comment period. The only comment of the public regarding consistency is discussed in the Summary and Response to Comments.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c), and 61.070, which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law. In addition, Texas Natural Resources Code §63.121 provides the Texas General Land Office with authority to adopt rules for protection of critical dune areas.

Texas Natural Resources Code §§61.011, 61.015, 61.022, 61.070, and 63.121 are affected by the adopted amendments.

§15.33. Certification Status of Nueces County Dune Protection and Beach Access Plan.

(a) Nueces County has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The county's plan was adopted on March 25, 1992 and amended on October 23, 1996.

(b) The General Land Office certifies that the dune protection portion of the La Concha master plan adopted by the Nueces County Commissioners Court on March 20, 1996, is consistent with state law.

(c) The General Land Office certifies that the dune protection portion of the Palms at Waters Edge master plan adopted by the Nueces County Commissioners Court on December 27, 1996, is consistent with state law.

(d) The General Land Office certifies that the dune protection section of the Mustang Island Episcopal Conference Center master plan adopted by the Nueces County Commissioner's Court on January 31, 2000 is consistent with state law.

(e) The General Land Office certifies as consistent with state law the amendment to Nueces County plan that was adopted by the Nueces County Commissioners Court on March 16, 2005, Order No. 20050032. The order amended the plan to increase the beach user fees imposed for parking on the beach in fee areas designated in the plan.

(f) The General Land Office certifies as consistent with state law the amendments to the Nueces County plan that were adopted by the Nueces County Commissioners Court on December 7, 2005.

(g) The General Land Office certifies as consistent with state law the following variances from §15.6(f)(3) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards) in the County's plan as amended on December 7, 2005. The plan establishes special erosion and flood protection requirements for dune protection permits providing that a permittee shall:

(1) locate residential and commercial structures permitted after May 2000 at least 350 feet landward of the vegetation line unless no practicable development alternatives are possible; and

(2) restrict development permitted after May 2000 in the area between 350 feet and 200 feet landward of the vegetation line to recreational amenities such as pools and picnic areas. In any case, applicants must demonstrate that every attempt has been made to minimize use of impervious surfaces in this zone.

(h) Compliance with the special erosion and flood protection requirements for dune protection permits specified in subsection (g) of this section establishes a rebuttable presumption that the permittee has followed the mitigation sequence requirements in §15.4(f) of this title for avoidance and minimization of effects on dunes and dune vegetation. The variance certified in subsection (g) of this section does not exempt a permittee from compliance with compensatory mitigation requirements for unavoidable adverse effects on dunes and dune vegetation.

(i) The special erosion and flood protection requirements for dune protection permits specified in subsection (g) of this section shall not apply to a previously platted subdivision lot that was the subject of a prior dune protection permit, or that was part of a master planned development, the plans for which were previously approved and adopted by the Commissioners' Court, provided that the construction authorized by a new permit is consistent with the prior permit or master plan.

(j) The special erosion and flood protection requirements for dune protection permits specified in subsection (g) of this section shall not apply to areas within the jurisdiction of the City of Port Aransas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 8, 2007.

TRD-200701773
Trace Finley
Policy Director
General Land Office
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Proposal publication date: November 10, 2006
For further information, please call: (512) 305-8598

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners adopts the amendment to §362.1, concerning Definitions, with changes to the proposed text as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1484). The section will be republished.

The adopted section will recognize the current OT practice framework, which includes practice settings that are in the community, schools, business, and other non-medical settings. It removes definitions no longer current.

The American Occupational Therapy Association (AOTA) sent in public comment concerning definition #41, Accredited Educational Program. The Board agreed with their suggestion and addressed the suggestion with a wording change.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.

(2) AOTA--American Occupational Therapy Association.

(3) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(4) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(5) Certified Occupational Therapy Assistant (COTA)--An alternate term for a Licensed Occupational Therapy Assistant. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR or LOT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

(6) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed $4,000;

(B) Confinement in jail for a term not to exceed one year; or

(C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).

(7) Client--The entity that receives occupational therapy. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(8) Complete Application--Notarized application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly and all other required documents.

(9) Complete Renewal--Contains renewal fee, renewal form with signed continuing education affidavit, home/work address(es) and phone number(s), and jurisprudence examination with at least 70% of questions answered correctly.

(10) Continuing Education Committee--Reviews and makes recommendations to the board concerning continuing education requirements and special consideration requests.

(11) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(12) Direct Contact--Refers to contact with the client and includes face-to-face in person or via visual telecommunications.

(13) Endorsement--The process by which the board issues a license to a person currently licensed in another state, the District of Columbia, or territory of the United States that maintains professional standards considered by the board to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in Section 17 of the Act. The current Examination is the initial certification Examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(18) First Available Examination--Refers to the first scheduled Examination after successful completion of all educational requirements.

(19) Health Care Condition--See Medical Condition.

(20) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(21) Investigation Committee--Reviews and makes recommendations to the board concerning complaints and disciplinary actions regarding licensees and facilities.

(22) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the board.

(23) Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners rules. This test is an open book examination with multiple choice or true-false questions. The passing score is 70%.

(24) License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(25) Licensed Occupational Therapist (LOT)--A person who holds a valid regular or provisional license to practice or represent self as an occupational therapist in Texas.

(26) Licensed Occupational Therapy Assistant (LOTA)--A person who holds a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and who is required to practice under the general supervision of an OTR or LOT.

(27) Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status Synonymous with the term health care condition.

(28) NBCOT--National Board for Certification in Occupational Therapy.

(29) Non-licensed Personnel--OT Aide or OT Orderly or other person not licensed by this board who provides support services to occupational therapy practitioners and whose activities require on-the-job training and close personal supervision.

(30) Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which does not require the routine intervention of a physician.

(31) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(32) Occupational Therapist (OT)--A person who holds a Temporary License to practice as an occupational therapist in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.

(33) Occupational Therapist, Registered (OTR)--An alternate term for a Licensed Occupational Therapist. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapist in Texas. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

(34) Occupational Therapy Practice--includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL) instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinaray systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental

activities of daily living (IADL), education, work, play, leisure, and social participation, including.

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(35) Occupational Therapy Assistant (OTA)--A person who holds a Temporary License to practice as an occupational therapy assistant in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.

(36) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a patient/client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(37) Occupational Therapy Practitioners--Registered Occupational Therapists, Licensed Occupational Therapists, Certified Occupational Therapy Assistants and Licensed Occupational Therapy Assistants licensed by this board.

(38) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(39) Place(s) of Business--Any facility in which a licensee practices.

(40) Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant. Only a person holding a license from TBOTE may practice occupational therapy in Texas.

(41) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(42) Regular License--A license issued by TBOTE to an applicant who has met the academic requirements and who has passed the Examination.

(43) Rules--Refers to the TBOTE Rules.

(44) Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(45) Supervision--See Chapter 373 of this title (relating to Supervision).

(46) Temporary License--A license issued by TBOTE to an applicant who meets all the qualifications for a license except taking the first available Examination after completion of all education requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701845
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: May 31, 2007
Proposal publication date: March 16, 2007
For further information, please call: (512) 305-6900

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.1

The Texas Board of Occupational Therapy Examiners adopts the amendment to §364.1, concerning Requirements for Licensure, without changes to the proposed text as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1486) and will not be republished.

The adopted section will change the duration of the first license to at least two years ending at the last day of the licensee's birth month. First time licensees will have the same continuing education requirement as all regular licensees.

Four comments from individuals were received in favor of adoption of the amendment, and one comment from an individual against, which suggested that new licensees have financial problems and should have a period of being CE free. The Board's response was that all professionals should begin their required professional responsibility as soon as possible, especially as this requirement is stressed while in the OT programs. The proposed minimum of two year license for new licensees will give them am-

ple opportunity to comply. Another comment suggested a prorated system, which the Board found unwieldy. No change was made in response to these comments.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701846
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: May 31, 2007
Proposal publication date: March 16, 2007
For further information, please call: (512) 305-6900

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CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.1, §367.2

The Texas Board of Occupational Therapy Examiners adopts the amendment to §367.1 concerning Continuing Education and §367.2 concerning Categories of Continuing Education without changes to the proposed text as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1487) and will not be republished.

The adopted section will require first time licensees to obtain the same continuing education requirement as all regular licensees.

Four comments from individuals were received in favor of adoption of the amendment and one comment from an individual against, mentioning that new licensees have financial problems and should have a period of being free from the continuing education requirement. The Board's response was that all professionals should begin their required professional responsibility as soon as possible, especially as this requirement is stressed while in the OT programs. The adopted minimum of two year license for new licensees will give new licensees ample opportunity to comply. Another comment suggested a prorated system, which the Board found unwieldy. No change was made in response to this comment.

The amendment is adopted under the Occupational Therapy Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701847
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: May 31, 2007
Proposal publication date: March 16, 2007
For further information, please call: (512) 305-6900

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CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1, §370.2

The Texas Board of Occupational Therapy Examiners adopts the amendment to §370.1 concerning License Renewal and §370.2 concerning Late Renewal with changes to the proposed text as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1487) and will be republished.

The adopted sections will require first time licensees to obtain the same continuing education requirement as all regular licensees. The language adds recognition for online renewal.

The American Occupational Therapy Association (AOTA) sent comment about subsections (a)(2) and (b). AOTA was concerned that licensees be held to renewal whether they receive a notice or not. The board response is that it mails licensees a renewal notice 90 days in advance of renewal. Licensees who practice with an expired license may claim they didn't receive the renewal notice. The board holds licensees responsible for knowing their birth month and expiration year which is printed on their renewal card.

AOTA expressed concern about the restoration process and its severity, which does not allow for any time off from the profession and has strict working requirements. The Board responded that the language in the rule mirrors the language in the statute. A change would require an amendment to the statute. No change was made in response to these comments.

The amendment is proposed under the Occupational Therapy Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§370.1. License Renewal.

(a) Licensee Renewal: Licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license or renewal certificate in hand. If a license expired after all required items are submitted but before the licensee received the renewal certificate, the licensee may not provide occupational therapy services until the renewal certificate is in hand.

(1) General Requirements. The renewal application is not complete until the board receives all required items. The components required for license renewals are:

(A) signed renewal application form, or online equivalent verifying completion of 30 hours of continuing education, as per Chapter 367 of this title (relating to Continuing Education);

(B) the renewal fee and any late fees which may be due;

(C) a passing score on the Jurisprudence exam; and

(D) any additional forms the board may require.

(2) The licensee is responsible for ensuring that the license is renewed, whether receiving a renewal notice or not.

(3) Online Renewal. Licensees may complete their renewal online but can only continue to practice with their online receipt for 30 days from the date on the receipt.

(A) Licensees who do not have a Social Security Number on file will be unable to renew online.

(B) Licensees who are inactive status, or who wish to change their current status must renew with a paper application before the expiration date.

(C) Licensees who want to change their name on their license must submit a copy of court documents with the new name before the renewal process so that the renewal card reflects the new name. Changing the wall license requires a replacement license fee. Should the change occur out of the renewal process sequence, the licensee must pay for a duplicate renewal card and/or wall license.

(b) Restrictions to Renewal/Restoration

(1) The board will not renew a license if a licensee has defaulted with the Student Loan Corporation (TGSLC). Upon notice from TGSLC that a repayment agreement has been established, the license shall be renewed.

(2) The board will not renew a license if the licensee has defaulted on a court or attorney general's notice of child support. Upon receipt that repayment has been established, the license shall be renewed.

§370.2. Late Renewal.

(a) A renewal application is late if all required materials are not postmarked prior to the expiration date of the license. Licensees who do not complete the renewal process prior to the expiration date are subject to late fees as described.

(1) If the license has been expired for 90 days or less, the person may renew the license by:

(A) submitting the renewal fee and the board approved late fee; and

(B) reporting completion of the required number of contact hours of continuing education.

(2) If the license has been expired for more than 90 days, but less than one year, the person may renew the license by:

(A) submitting the renewal fee and the board approved late fee; and

(B) reporting completion of the required number of contact hours of continuing education.

(b) If the license has been expired for one year or longer, the person may not renew the license. To obtain a new license, the applicant must retake and pass the national examination and comply with the requirements and procedure for obtaining an original license set by Chapter 364 of this title (relating to Requirements for Licensure).

(c) Restoration: Persons holding a license in another state, previously licensed in Texas:

(1) The board may issue a license to a person who was licensed in Texas, moved to another state, is currently licensed in the other state, and has been engaged in the practice of occupational therapy in the other state for the two years preceding the application if the person meets the following requirements:

(A) makes the application for licensure to the board on a form prescribed by the board;

(B) submits to the board verification of the current license in good standing from the other state;

(C) submits the board form documenting continuous employment in occupational therapy in another state for the two years preceding the application;

(D) passes the jurisprudence exam; and

(E) pays the board approved fee.

(2) The license shall expire at the last day of the month of the licensee's birth. The duration shall be at least two years, and licensees shall obtain the continuing education as per Chapter 367 of this title (relating to Continuing Education).

(d) Military Service

(1) If a reserve status licensee is called into active military service, and his or her license expires during service, the licensee may follow the requirements for renewal with no penalty if the licensee:

(A) submits the renewal within 90 days after return to reserve status;

(B) submits evidence of active service and its inclusive dates.

(2) A reserve status licensee who is called into active military service will have 6 additional months after release from active military service to submit proof of completion of the 30 required CE hours as per Chapter 367 of this title (relating to Continuing Education).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 11, 2007.

TRD-200701848
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: May 31, 2007
Proposal publication date: March 16, 2007
For further information, please call: (512) 305-6900

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

General Land Office

Title 31, Part 1

In accordance with §2001.039, Government Code, the Texas General Land Office (GLO) is serving notice of its intent to review rules under Title 31, Part 1 of the Texas Administrative Code.

The rule review will be conducted on a chapter-by-chapter basis and individual notices of intent to review all rules under each chapter will be published in the Rule Review section of the *Texas Register.* Review of the rules under each chapter listed in this plan will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a rule may need to be amended to further refine the directives and goals of the GLO, or that no changes to a rule as currently in effect are necessary as that rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, Texas General Land Office, 1700 North Congress, Room 910, Austin, Texas 78701-1495, (512) 475-1859, walter.talley@glo.state.tx.us.

The GLO will initiate the review of rules within each of the following chapters that have not already been reviewed in accordance with §2001.039, Government Code. The review will begin in May 2007 and be concluded by no later than May 31, 2008.

Chapter 1. Executive Administration.

Chapter 2. Rules of Practice and Procedure.

Chapter 9. Exploration and Leasing of State Oil and Gas.

Chapter 10. Exploration and Development of State Minerals Other Than Oil and Gas.

Chapter 14. Relationship Between Agency and Private Organizations.

Chapter 19. Oil Spill Prevention and Response.

TRD-200701920

Trace Finley
Policy Director
General Land Office
Filed: May 16, 2007

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Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter F (§§291.101 - 291.105), concerning Non-Resident Pharmacy (Class E), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 20, 2007.

TRD-200701852
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: May 14, 2007

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The Texas State Board of Pharmacy files this notice of intent to review Chapter 295 (§§295.1 - 295.9, 295.11 - 295.13, and 295.15), concerning Pharmacists, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 20, 2007.

TRD-200701851
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: May 14, 2007

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Texas State Board of Examiners of Psychologists

Title 22, Part 21

The Texas State Board of Examiners of Psychologists proposes to review Chapter 465, concerning Rules of Practice (§§465.11 - 465.20). The proposed amendments to this chapter are published in the Proposed Rules section of this issue of the *Texas Register*.

Comments on the proposed rule review may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Tower II, Suite 2-450, Austin, Texas 78701.

TRD-200701822
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Filed: May 10, 2007

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Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas files this notice of intention to review and re-adopt 16 TAC Chapter 1 relating to Practice and Procedure. This review is being conducted in accordance with Texas Government Code §2001.039. The agency's reasons for adopting these rules continue to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Kellie Martinec at (512) 475-1295. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

TRD-200701877
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: May 15, 2007

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The Railroad Commission of Texas files this notice of intention to review and re-adopt 16 TAC Chapter 8 relating to Pipeline Safety Regulations. This review is being conducted in accordance with Texas Government Code §2001.039. The agency's reasons for adopting these rules continue to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Kellie Martinec at (512) 475-1295. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

TRD-200701878
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: May 15, 2007

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The Railroad Commission of Texas files this notice of intention to review and re-adopt 16 TAC Chapter 20 relating to Administration. This review is being conducted in accordance with Texas Government Code §2001.039. The agency's reasons for adopting these rules continue to exist.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Kellie Martinec at (512) 475-1295. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

TRD-200701879
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: May 15, 2007

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Adopted Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts (comptroller) readopts all sections under Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter N (County Sales and Use Tax):

§3.251. Adopting or Abolishing County Tax.

§3.252. Collection and Allocation of County Tax.

§3.253. County Use Tax.

The Comptroller of Public Accounts (comptroller) readopts all sections under Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter P (Municipal Sales and Use Tax):

§3.371. Effect of Rules; Permits and Certificates; Exclusion of Certain Sales.

§3.372. Adopting, Increasing, Decreasing, or Abolishing City Tax.

§3.373. Change or Alteration of City Boundaries.

§3.374. Collection and Allocation of the City Sales Tax.

§3.375. City Use Tax.

§3.376. Prior Contract Exemptions.

§3.377. Divergent Use of a Direct Payment, Resale or Exemption Certificate.

§3.378. Natural Gas and Electricity.

§3.379. Contractors.

The Comptroller of Public Accounts (comptroller) readopts all sections under Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter R (Transit Sales and Use Tax):

§3.421. Effect of Rules; Permits and Certificates; Exclusion of Certain Sales of Qualified Retailers.

§3.422. Adopting, Increasing, Decreasing, or Abolishing Transit (MTA) Tax.

§3.423. Change or Alteration of Authority Boundaries; Withdrawal from Authority; Notification Required.

§3.424. Collection and Allocation of Transit Sales Tax.

§3.425. Transit Use Tax.

§3.426. Prior Contract Exemptions.

§3.427. Divergent Use of a Direct Payment, Resale, or Exemption Certificate.

§3.428. Natural Gas and Electricity.

§3.429. Contractors.

The comptroller has reviewed Subchapter N, §§3.251 - 3.253, Subchapter P, §§3.371 - 3.379, and Subchapter R, §§3.421 - 3.429, and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to these rules will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 19, 2004, issue of the *Texas Register* (29 TexReg 2927). No comments were received concerning the readoption of these sections.

TRD-200701919
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: May 16, 2007

♦ ♦ ♦

The Comptroller of Public Accounts (comptroller) readopts Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter O (State Sales and Use Tax), §§3.281 - 3.308 and §§3.310 - 3.323.

§3.281. Records Required; Information Required.

§3.282. Auditing Taxpayer Records.

§3.283. Bartering Clubs and Exchanges.

§3.284. Drugs, Medicines, Medical Equipment, and Devices.

§3.285. Resale Certificate; Sales for Resale.

§3.286. Seller's and Purchaser's Responsibilities.

§3.287. Exemption Certificates.

§3.288. Direct Payment Procedures and Qualifications.

§3.289. Alcoholic Beverage Exemptions.

§3.290. Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Special Equipment.

§3.291. Contractors.

§3.292. Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property.

§3.293. Food; Food Products; Meals; Food Service.

§3.294. Rental and Lease of Tangible Personal Property.

§3.295. Natural Gas and Electricity.

§3.296. Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer.

§3.297. Carriers.

§3.298. Amusement Services.

§3.299. Newspapers, Magazines, Publishers, Exempt Writings.

§3.300. Manufacturing; Custom Manufacturing; Fabricating; Processing.

§3.301. Promotional Plans, Coupons, Retailer Reimbursement.

§3.302. Accounting Methods, Credit Sales, Bad Debt Deductions, Repossession, Interest on Sales Tax and Trade-Ins.

§3.303. Transportation and Delivery Charges.

§3.304. Morticians and Monument Builders.

§3.305. Criminal Offenses and Penalties.

§3.306. Sales of Mobile Offices, Portable Buildings, Prefabricated Buildings, and Ready-Built Homes.

§3.307. Florists.

§3.308. Computers--Hardware, Software, Services and Sales.

§3.310. Laundry, Cleaning, and Garment Services.

§3.311. Auctioneers, Brokers, and Factors.

§3.312. Graphic Arts or Related Occupations; Miscellaneous Activities.

§3.313. Cable Television Service.

§3.314. Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, Export Packers, and Stevedoring Materials and Supplies.

§3.315. Motor Vehicle Parking and Storage.

§3.316. Occasional Sales; Joint Ownership Transfers; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters.

§3.317. Massage Parlors, Escort Services, and Turkish Baths.

§3.318. Water-Related Exemptions.

§3.319. Prior Contracts.

§3.320. Texas Emissions Reduction Plan Surcharge; Off-Road, Heavy-Duty Diesel Equipment.

§3.321. Advertising Agencies.

§3.322. Exempt Organizations.

§3.323. Imports and Exports.

The comptroller has reviewed Subchapter O, §§3.281 - 3.308 and §§3.310 - 3.323, and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to these rules will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2703). No comments were received concerning the readoption of these sections.

TRD-200701907
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: May 16, 2007

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Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 75, Curriculum, Subchapter AA, Commissioner's Rules Concerning Driver Education Standards of Operation for Public Schools, Education Service Centers, and Colleges or Universities; and Subchapter BB, Commissioner's Rules Concerning Special Provisions for Career and Technology Education, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 75, Subchapters AA and BB, in the February 16, 2007, issue of the *Texas Register* (32 TexReg 633).

Relating to the review of 19 TAC Chapter 75, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA will propose changes to Subchapter AA to update statutory references along with any other changes that may result from the 80th Texas Legislature, 2007, after the close of the session.

Relating to the review of 19 TAC Chapter 75, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. The TEA will propose changes to Subchapter BB at a later date to update section titles and to reflect existing statute.

The TEA received no comments related to the rule review of 19 TAC Chapter 75, Subchapters AA and BB.

This concludes the review of 19 TAC Chapter 75.

TRD-200701883
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 15, 2007

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The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 76, Extracurricular Activities, Subchapter AA, Commissioner's Rules, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 76, Subchapter AA, in the February 16, 2007, issue of the *Texas Register* (32 TexReg 634).

The TEA finds that the reasons for adopting 19 TAC Chapter 76, Subchapter AA, continue to exist and readopts the rule. The TEA plans to propose amendments to Subchapter AA at a later date in order to provide clarification about provisions relating to extracurricular activities.

The TEA received no comments related to the rule review of 19 TAC Chapter 76, Subchapter AA.

This concludes the review of 19 TAC Chapter 76.

TRD-200701884
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 15, 2007

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Texas State Board of Examiners of Psychologists

Title 22, Part 21

The Texas State Board of Examiners of Psychologists adopts its review of Chapter 465, concerning Rules of Practice (§§465.1 - 465.10) and Chapter 473, concerning Fees (All). The adopted amendments to Chapter 465 and Chapter 473 are published in the Adopted Rules section of this issue of the *Texas Register*.

No public comments were received regarding the proposed rule review of these chapters.

TRD-200701823
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Filed: May 10, 2007

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Hearings

Multifamily Housing Revenue Bonds

Series 2007

Chaparral Village Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/11/2006, at 6:00pm, at the Ector County Library, 321 W 5th Street, Odessa 79761, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - Chaparral, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of Odessa. The public hearing, which is the subject of this notice, will concern the Chaparral Village Apartments to be located at 1411 S. Grant St., City of Odessa, County of Ector, Texas, and to contain approximately 80 apartments. The Property will be owned by RHAC - Chaparral, LLC.

Cove Village Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/27/2006, at 6:00pm, at the Copperas Cove Public Library, 501 S Main St., Copperas Cove, TX 76522, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - Cove, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of Copperas Cove. The public hearing, which is the subject of this notice, will concern the Cove Village Apartments to be located at 1102 Golf Course Rd., City of Copperas Cove, County of Coryell, Texas, and to contain approximately 50 apartments. The Property will be owned by RHAC - Cove, LLC.

El Nido Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/5/2006, at 6:00pm, at the Border Heritage Center, Main Library, 501 N. Oregon, El Paso, TX, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - El Nido, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of El Paso. The public hearing, which is the subject of this notice, will concern the El Nido Apartments to be located at 204 Alicia Dr., City of El Paso, County of El Paso, Texas, and to contain approximately 104 apartments. The Property will be owned by RHAC - El Nido, LLC.

Garden Village Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/12/2006, at 6:00pm, at the Mahon Public Library, 1306 9th St., Lubbock, TX79401, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - Garden, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of Lubbock. The public hearing, which is the subject of this notice, will concern the Garden Village Apartments to be located at 1340 65th Dr., City of Lubbock, County of Lubbock, Texas, and to contain approximately 62 apartments. The Property will be owned by RHAC - Garden, LLC.

High Plains Village Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/12/2006, at 6:00pm, at the Mahon Public Library, 1306 9th St., Lubbock, TX79401, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - High Plains, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of Lubbock. The public hearing, which is the subject of this notice, will concern the High Plains Village Apartments to be located at 1607 Iola Ave, City of Lubbock, County of Lubbock, Texas, and to contain approximately 50 apartments. The Property will be owned by RHAC - High Plains, LLC.

Jose Antonio Escajeda Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/5/2006, at 6:00pm, at the Border Heritage Center, Main Library, 501 N. Oregon, El Paso, TX, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - JAE, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of El Paso. The public hearing, which is the subject of this notice, will concern the Jose Antonio Escajeda Apartments to be located at 710 South Park, City of El Paso, County of El Paso, Texas, and to contain approximately 88 apartments. The Property will be owned by RHAC - JAE, LLC.

Los Ebanos Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/4/2007, at 6:00pm, at the Brownsville Public Library, 2600 Central Blvd., Brownsville, Texas, 78520, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - Ebanos, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of Brownsville. The public hearing, which is the subject of this notice, will concern the Los Ebanos Apartments to be located at 2133 Barnard Rd, City of

Brownsville, County of Cameron, Texas, and to contain approximately 65 apartments. The Property will be owned by RHAC - Ebanos, LLC.

Peppertree Acres Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/6/2006, at 6:00pm, at the Southwest Branch Library, 4001 Library Lane, Fort Worth, TX 76109, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - Peppertree, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of Fort Worth. The public hearing, which is the subject of this notice, will concern the Peppertree Acres Apartments to be located at 6555 Sheridan Cir, City of Fort Worth, County of Tarrant, Texas, and to contain approximately 148 apartments. The Property will be owned by RHAC - Peppertree, LLC.

River Park Village East Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/27/2006, at 6:00pm, at the Copperas Cove Public Library, 501 S Main St., Copperas Cove, TX 76522, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - River Park, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of Lampasas. The public hearing, which is the subject of this notice, will concern the River Park Village East Apartments to be located at 1309 Central Texas Expwy, City of Lampasas, County of Lampasas, Texas, and to contain approximately 50 apartments. The Property will be owned by RHAC - River Park, LLC.

Salem Village Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/25/2006, at 6:00pm, at the Victoria Public Library, 302 N. Main, Victoria, Texas 77901, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - Salem, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of Victoria. The public hearing, which is the subject of this notice, will concern the Salem Village Apartments to be located at 5201 John Stockbauer Dr, City of Victoria, County of Victoria, Texas, and to contain approximately 105 apartments. The Property will be owned by RHAC - Salem, LLC.

Sierra Vista Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/5/2006, at 6:00pm, at the Border Heritage Center, Main Library, 501 N. Oregon, El Paso, TX, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - Sierra, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of El Paso. The public hearing, which is the subject of this notice, will concern the Sierra Vista Apartments to be located at 10501 Montwood, City of El Paso, County of El Paso, Texas, and to contain approximately 106 apartments. The Property will be owned by RHAC - Sierra, LLC.

Spring Terrace Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/13/2006, at 6:00pm, at the Southwest Branch, 6801 W 45th, Amarillo, Texas, 79109, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - Spring, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of Amarillo. The public hearing, which is the subject of this notice, will concern the Spring Terrace Apartments to be located at 2600 S. Spring St., City of Amarillo, County of Potter, Texas, and to contain approximately 50 apartments. The Property will be owned by RHAC - Spring, LLC.

Win-Lin Village Apartments

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on 6/13/2006, at 6:00pm, at the Southwest Branch, 6801 W 45th, Amarillo, Texas, 79109, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to RHAC - WinLin, LLC, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of Amarillo. The public hearing, which is the subject of this notice, will concern the Win-Lin Village Apartments to be located at 5700 Wabash St., City of Amarillo, County of Potter, Texas, and to contain approximately 50 apartments. The Property will be owned by RHAC - WinLin, LLC.

All interested parties are invited to attend such public hearing to express their views with respect to the Property and the issuance of the Bonds. Questions or requests for additional information may be directed to David Danenfelzer at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 403.

Persons who intend to appear at the hearing and express their views are invited to contact David Danenfelzer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to David Danenfelzer prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at 1-888-638-3555, ext. 400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Laura Ross at 1-888-638-3555, ext. 400, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Danenfelzer at ddanenfelzer@tsahc.org.

TRD-200701910
David Long
Executive Director
Texas State Affordable Housing Corporation
Filed: May 16, 2007

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Texas Department of Agriculture

Weights and Measures Administrative Penalty Matrix

The Texas Legislature, under Chapter 13 of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (department) the responsibility to provide consumers and businesses a fair and efficient trade environment and to encourage consumer confidence. To accomplish these goals the department registers commercial weighing and measuring devices and inspects them on a routine basis; inspects packaged goods to ensure that they are properly labeled and correctly weighed; and conducts price verification inspections to ensure that electronic scanning systems and manual price recognition systems operate correctly.

The department is publishing the following Weights and Measures Administrative Penalty Matrix to inform the regulated public regarding the consequences of noncompliance with Chapter 13 of the Texas Agriculture Code (Code) and rules adopted under that chapter, as published in Chapter 12 of Title 4 of the Texas Administrative Code (TAC). This matrix has been developed to provide consistent, uniform, and fair penalties for violations of the aforementioned statutory and rule provisions. The department's authority to assess penalties for the enforcement of Chapter 13 and associated rules is found in §§12.020, 13.306, 13.356, 13.405, 13.1012, and 13.2555 of the Code. By law, the department may assess administrative penalties up to a maximum of $500 for each violation. Each day that a violation continues or occurs may be considered a separate violation for purposes of assessing administrative penalties.

This matrix is based on current information. As the enforcement of these types of violations continues and additional data are gathered, the matrix will be reviewed and, if need be, adjusted to reflect any changes in the information upon which the current matrix is based. This matrix replaces the one previously published in the December 27, 1996, issue of the *Texas Register* (21 TexReg 12585). This matrix is effective immediately upon publication in the *Texas Register* and supersedes all previous matrices for those violations committed on or after the date of publication.

The general penalties set forth in this matrix were established by considering the criteria set forth in the Code, §12.020(d): (1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public; (2) the damage to property or the environment caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter future violations; (5) efforts to correct the violation; and (6) any other matter that justice may require.

Although every attempt has been made to be comprehensive in this matrix in specifying the penalties for particular types and levels of noncompliance, the department, taking the above factors into account for the particular circumstances, may, as justice requires, assess penalties greater than specified in this matrix, bound only by the statutory limits, when the misconduct is knowing, deliberate, and causes or potentially causes serious economic harm to a large number of Texas consumers. Alternatively or additionally, in appropriate cases and notwithstanding the provisions of this penalty matrix, instances of serious fraud or deliberate violation of the state's weights and measures laws may be referred to the Office of the Attorney General for civil penalties up to $10,000 per occurrence per day or to a local district or county attorney for either civil penalties (also up to $10,000 per occurrence per day) or criminal prosecution or both.

In addition to or in lieu of administrative penalties, the department is authorized to lock-down or otherwise prohibit the use of any weighing of measuring device that does not operate within the tolerances established or adopted by the department, that is not properly maintained according to standards established or adopted by the department, or that is not properly registered as required by the Code or rules adopted under the authority of the Code. The department is further authorized to seek injunctive relief.

Weights and Measures Administrative Penalty Matrix

Source Law	Violation	First Offense--Penalty Description	Subsequent Offenses[1]--Penalty Description
G-UR.1.1*	Failure to use suitable device[2] (use of not legal for trade devices)[3]	$250 for each device marked "Not Legal for Trade"; written warning if unmarked	$500 for each device, whether marked or unmarked[5]
G-UR.3.1*	Failure to operate device[2] as it was designed to be used[3]	$250 for each device improperly operated	$250 - $500 for each device improperly operated[5]
G-UR.3.3*	Failure to position device[2] properly (e.g. readout visible)[3]	$100 for each device improperly positioned	$100 - $500 for each device improperly positioned[5]
G-UR.4.1*	Failure to maintain device[2] in proper working order (maintenance of equipment)[3] NOTE: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix.	*Out of Tolerance* • > 2x in excess of tolerance in favor of the operator or owner of the device, $100 for each device improperly maintained • > 3x in excess of tolerance in favor of the operator or owner of the device, $150 for each device improperly maintained • > 4x in excess of tolerance in favor of the operator or owner of the device, $250 for each device improperly maintained	*Out of Tolerance* • > 2x in excess of tolerance in favor of the operator or owner of the device, $200 for each device improperly maintained • > 3x in excess of tolerance in favor of the operator or owner of the device, $300 for each device improperly maintained • > 4x in excess of tolerance in favor of the operator or owner of the device, $500 for each device improperly maintained
G-UR.4.1*	Failure to maintain device[2] in proper working order (maintenance of equipment)[3] NOTE: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix.	*Deviation from zero in favor of device owner* • 60% - 80% of devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance), $100 for each device found to measure or weigh in favor of the operator or owner of the device • > 80% of devices found to measure or weigh in favor of the operator or owner of the device (even if within tolerance), $250 for each device found to measure or weigh in favor of the operator or owner of the device	*Deviation from zero in favor of device owner* • 60% - 80% of devices found to measure or weigh in favor of the operator or the owner of the device (even if within tolerance), $200 for each device found to measure or weigh in favor of the operator or owner of the device • > 80% of devices found to measure or weigh in favor of the operator or the owner of the device (even if within tolerance), $500 for each device found to measure or weigh in favor of the operator or owner of the device
G-UR.4.1*	Failure to maintain device[2] in proper working order (maintenance of equipment)[3] NOTE: For motor fuel dispensers, each grade constitutes a separate device for purposes of calculating penalties under this provision of the penalty matrix.	*Other:* $50 - $100 for each failure for each device improperly maintained[5]	*Other:* $100 - $250 for each failure for each device improperly maintained[5]
G-UR.4.5*	Failure to maintain security seal on adjusting mechanism of a device[2, 3]	$500 for each device without a properly maintained security seal	$500 for each device without a properly maintained security seal; and/or suspension or revocation of license[5]
S.1.8.4* S.1.6.7*	Failure to print the required information on the sales receipt of a point-of-sale system[3]	$100 per noncompliant point-of-sale output device (if all output devices at a single location are affected because of a defect in a single controller for all such output devices, then penalty is per point-of-sale system)	$250 - $500 per noncompliant point-of-sale output device[5] (if all output devices at a single location are affected because of a defect in a single controller for all such output devices, then penalty is per point-of-sale system)
S.1.6.4.2*	Failure to display or post the product identity on a retail motor-fuel dispenser[3]	$50 for each product for which the identity is not displayed	$100 - $250 for each product for which the identity is not displayed[5]

S.1.6.4.1*	Failure to display or post the unit price of a product on a retail motor-fuel dispenser[3]	$50 for each product for which the unit price is not displayed	$100 - $250 for each product for which the unit price is not displayed[5]
§13.035†	False price advertisement (price verification)[4] Item Overcharge Percentage (IOP) Adjustment Table Overcharge Percentage — Adjustment < 10% — $0 10 - 50% — $25 51 - 150% — $50 151 - 200% — $75 201 - 300% — $100 301 - 400% — $150 > 400% — $200	for each overcharged item, $150 plus IOP adjustment	for each overcharged item, $300 plus IOP adjustment
§13.036†	False representation of commodity weight or measure--standard weight or measure packages	$250 for each commodity whose weight or measure has been falsely represented	$500 for each commodity whose weight or measure has been falsely represented
§13.036†	False representation of commodity weight or measure--random weight or measure packages	$250 for each commodity whose weight or measure has been falsely represented	$500 for each commodity whose weight or measure has been falsely represented
§13.036†	False representation of commodity weight or measure--bulk commodities, seller furnishing weight or measure	$250 for each transaction involving a false representation	$500 for each transaction involving a false representation
§13.036†	False representation of commodity weight or measure--bulk commodities, buyer furnishing weight or measure	$250 for each transaction involving a false representation	$500 for each transaction involving a false representation
§13.040†	Violation of a stop-sale order NOTE: Each individual package or item sold in violation of the stop-sale order constitutes a separate violation. A penalty may be assessed for violation of the order as a whole or for each individual violation of the order, as specified in the penalty descriptions.	$500 for each order violated	$500 for each order violated plus, if more than one violation occurs in connection with the stop-sale, the greater of (1) $50 for each additional individual package or item sold or distributed in violation of the stop-sale order or (2) two times the greater of the sales price or the highest advertised price of each additional individual package or item sold or distributed in violation of the stop-sale order, up to $500 per each additional individual package or item sold or distributed in violation of the stop-sale order NOTE: Choice (1) will be used when neither of the prices in (2) can be determined.
§13.116†	Use of a weight or measure without a seal affixed to or stamped on the weight or measure by the Texas Department of Agriculture[3]	$250 for each unsealed weight or measure used	$250 - $500 for each use of an unsealed weight or measure[5]
§13.117†	Refusing to permit test of weight or measure	$250 for each day during which the person refuses to permit a test	$500 for each day during which the person refuses to permit a test; and/or suspension or revocation of license[5]
§13.118†	Hindering the department or a sealer in the performance of official duties	$250 for each day during which the person acts to hinder the department or a sealer	$500 for each day during which the person acts to hinder the department or a sealer; and/or suspension or revocation of license[5]

§13.119†	Unauthorized removal of an out-of-order tag or device	$250 for each tag or device removed without authorization	$500 for each tag or device removed without authorization; and/or suspension or revocation of license[5]
§13.120† §13.037†	Use, sale, or possession of a false weight or measure[3]	$250 for each use or sale	$500 for each use or sale; and/or suspension or revocation of license[5]
§13.121†	Improper disposal of a condemned weight or measure	$250 for each condemned weight or measure	$500 for each condemned weight or measure
§13.259†	Intentionally or knowingly issuing a false certificate of weight or measure	$250 for each false certificate	$500 for each false certificate; and/or suspension or revocation of license[5]
§13.260†	Intentionally or knowingly issuing a certificate of weight or measure without authority	$250 for each false certificate	$500 for each false certificate
§13.1011†	Failure to register device (new business) before the end of a 30 day grace period which begins to run the day after the person operating the devices is notified by the department that the device is not registered[3]	for each device not registered, the greater of $250 or an amount equal to the total registration fees for all unregistered devices, up to $500 per device (penalty is in addition to any registration fees due)	for each device not registered, the greater of $500 or an amount equal to twice the total registration fees for all unregistered devices, up to $500 per device (penalty is in addition to any registration fees due)
§13.1011†	Failure to register additional device before the end of a 30 day grace period which begins to run the day after the person operating the devices is notified by the department that the device is not registered[3]	for each additional device, the greater of $50 or an amount equal to the registration fee for that device, up to $500 per device (penalty is in addition to any registration fees due)	for each additional device, the greater of $100 or two times an amount equal to the registration fee for that device, up to $500 per device (penalty is in addition to any registration fees due)
§13.1011†	Failure to properly register device before the end of a 30 day grace period which begins to run the day after the person operating the devices is notified by the department that the device is not properly registered[3]	for each improperly registered device, the greater of $50 or an amount equal to the registration fee for that device, up to $500 per device (penalty is in addition to any registration fees due)	for each improperly registered device, the greater of $100 or two times an amount equal to the registration fee for that device, up to $500 per device (penalty is in addition to any registration fees due)
§13.1011†	Operating with a device registration that is expired by less than one year and, except as noted below, after a 30 day grace period which begins to run the day after the person operating the devices is notified by a department inspector that the registration has expired[3] Exception: If the person operating a device with a registration that is expired by less than one year has failed to timely and properly renew a device registration within the preceding three-year period, then no grace period is allowed.	for each device covered by the registration, the greater of $50 or an amount equal to the registration fee for that device, up to $500 per device (penalty is in addition to any registration fees due)	for each device covered by the expired registration, the greater of $100 or two times an amount equal to the registration fee for that device, up to $500 per device (penalty is in addition to any registration fees due)
§13.1011†	Operating with a device registration expired by one year or more (no grace period)[3]	for each device covered by the expired registration, the greater of $100 or two times an amount equal to the registration fee for that device, up to $500 per device (penalty is in addition to any registration fees due)	for each device covered by the expired registration, the greater of $200 or four times an amount equal to the registration fee for that device, up to $500 per device (penalty is in addition to any registration fees due)

§13.1011†	Operating a device whose use has been prohibited by the department under §13.1011[3]	$500 for each device whose use has been prohibited	$500 for each device whose use has been prohibited and/or suspension or revocation of license[5]
§12.42‡	Failure to submit a service report in a timely manner--new installations	$500 for each outlet	$500 for each outlet; and/or suspension or revocation of license[5]
§12.42‡	Failure to submit a service report in a timely manner--other than new installations NOTE: A report is not "submitted" until it has been received by the department at the proper regional office.	for each service report not submitted in a timely manner, $249 plus $1 for each day by which the report is late, including the day the report is submitted	for each service report not submitted in a timely manner, $495 plus $5 for each day by which the report is late, including the day the report is submitted; and/or suspension or revocation of license[5]
§12.42‡	Submission of a service report that is incomplete, inaccurate, or which contains false information NOTE: An unsigned service report is incomplete; each combination of an out-of-order report # and associated device ID# not reported, inaccurately reported, incompletely reported, or falsely reported constitutes a separate missing, incomplete, inaccurate, or false item.	$250 for each report that contains an incomplete, inaccurate, or false item plus $25 for each additional item in the report that is missing, incomplete, inaccurate, or false	$500 for each report that contains an incomplete, inaccurate, or false item plus $50 for each additional item in the report that is missing, incomplete, inaccurate, or false; and/or suspension or revocation of license[5]
§12.42‡ §12.52‡ §12.61‡	Failure to perform an adequate test or service of a device	$250 for each device inadequately tested or serviced	$500 for each device inadequately tested or serviced; and/or suspension or revocation of license[5]
§12.52‡	Failure to submit test reports in a timely manner--Licensed Inspection Companies NOTE: A report is not "submitted" until it has been received by the department at the proper regional office.	for each test report not submitted in a timely manner, $249 plus $1 for each day by which the report is late, including the day the report is submitted	for each service report not submitted in a timely manner, $495 plus $5 for each day by which the report is late, including the day the report is submitted; and/or suspension or revocation of license[5]
§12.52‡	Submission of a test report that is incomplete, inaccurate, or which contains false information--Licensed Inspection Companies	$250 for each report that contains an incomplete, inaccurate, or false item plus $25 for each additional item in the report that is missing, incomplete, inaccurate, or false	$500 for each report that contains an incomplete, inaccurate, or false item plus $50 for each additional item in the report that is missing, incomplete, inaccurate, or false; and/or suspension or revocation of license[5]
§12.40‡ §13.401† §13.1012†	Failure to obtain or renew a license before the end of a 30 day grace period which begins to run the day after the person required to be licensed is notified (other than through a written renewal notice or reminder letter) by a department inspector or other official that a license or renewal is required--Licensed Service Company	the greater of $250 or two times an amount equal to the licensing fee, up to $500	$500
§12.50‡ §13.302† §13.352† §13.1012†	Failure to obtain or renew a license before the end of a 30 day grace period which begins to run the day after the person required to be licensed is notified (other than through a written renewal notice or reminder letter) by a department inspector or other official that a license or renewal is required--License Inspection Company	the greater of $250 or two times an amount equal to the licensing fee, up to $500	$500

§12.60‡ §13.1012†	Failure to obtain or renew a registration before the end of a 30 day grace period which begins to run the day after the person required to be registered is notified (other than through a written renewal notice or reminder letter) by a department inspector or other official that registration or renewal is required--Registered Technician	the greater of $250 or two times an amount equal to the registration fee, up to $500	$500
§12.40‡ §12.50‡ §12.60‡ §13.302† §13.352† §13.401† §13.1012†	Operating with a license expired by one year or more (no grace period)--Licensed Service Companies, Licensed Inspection Companies, and Registered Technicians[3]	The greater of $250 or two times an amount equal to the licensing fee, up to $500 (penalty is in addition to any registration fees due)	The greater of $500 or four times an amount equal to the licensing fee, up to $500 (penalty is in addition to any registration fees due)
§12.61‡	Placing a device into service, removing an out-of-order tag or performing inspections of LPG meters or ranch scales without being employed by a licensed service company or licensed inspection company--Registered Technicians	$250	$500; and/or suspension or revocation of license[5]
§12.40‡ §12.50‡ §12.61‡	Failure to use annually certified test standards	$250	$500; and/or suspension or revocation of license[5]
§12.74‡	Failure to retain for two years a copy of an issued official certificate	$250	$500; and/or suspension or revocation of license[5]
Various	Failure to comply with any requirement (of Chapter 13, Texas Agriculture Code, or department rules adopted under the authority of that chapter) which is not expressly described in this matrix	$50 - $500, per outlet or device[2, 5]	$50 - $500, per outlet or device[2, 5]; and/or suspension or revocation of license[5]

[1] The department will consult the three-year period immediately prior to the date of an alleged violation to determine whether the alleged violation is a subsequent offense. If a prior offense occurred on a date within the three-year period, the penalty amount will be determined using the subsequent offense column.
[2] The term "equipment" as used in the NIST standards encompasses the term "device" as used in this penalty matrix.
[3] All devices found out-of-tolerance will be issued an out-of-order tag requiring the device to be recalibrated, repaired, replaced or reconditioned prior to further commercial use.
[4] A penalty is assessed for each overcharged item. An overcharged item is one whose price on the final receipt printed during the inspection checkout is higher than the lowest advertised price for that item. The item overcharge percentage is determined by taking the absolute value of the difference between the price charged and the lowest advertised price (the correct price), dividing the result by the correct price, and rounding to the nearest whole percent by adding 0.5% and truncating any decimal remainder. The amount of the upward adjustment is then determined by consulting the IOC Adjustment Table in the violation column of the matrix. The maximum penalty for any one overcharged item is $500. The total penalty to be assessed is the sum of the penalties for all overcharged items.
[5] As deemed necessary to address the nature, circumstances, extent, and gravity and the hazard or potential hazard of the violation.
* NIST Handbook 44, adopted by reference, Texas Administrative Code, Chapter 12 Weights and Measures, Subchapter B, Section 12.10
† Texas Agriculture Code, Chapter 13 Weights and Measures
‡ Texas Administrative Code, Chapter 12 Weights and Measures

TRD-200701875
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: May 15, 2007

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Brazos Valley Council of Governments

Public Notice

The Brazos Valley Council of Governments (BVCOG) is soliciting quotes for a Registered Nurse to provide clinical and case management monitoring for a total of four HIV subcontractors located in the cities of Bryan, Temple, Waco, and San Angelo, Texas. The Request for Quotes (RFQ) can be downloaded at http://hiv.bvcog.org or by request to Crystal Crowell at (979) 595-2830, via e-mail at ccrowell@bvcog.org, or by fax at (979) 595-2815.

The purpose of the RFQ is to solicit proposals for a Clinical Monitor who will be responsible for monitoring HIV service providers for compliance with Ryan White, Texas Department of State Health Services, and BVCOG requirements and minimum standards and providing tech-

nical assistance to providers in meeting the requirements. Monitoring must be provided at least annually to each subcontractor, or more often if necessary depending on the performance of the subcontractor. Monitoring duties include performing desktop audits and on-site visits, completing monitoring reports, and providing assistance in meeting minimum standards. Services may also include providing additional technical assistance as needed.

The primary consideration in selecting individuals to conduct clinical and case management monitoring shall be on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price as illustrated in the response submitted.

The deadline for proposals is 5:00 p.m. CST on Friday, June 15, 2007. Please direct questions in writing to Crystal Crowell, HIV Program Manager, at: ccrowell@bvcog.org or FAX: (979) 595-2815. Deadline for questions is Tuesday, June 5, 2007, 5:00 p.m. CST.

TRD-200701880
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: May 15, 2007

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to §§403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapters F and G, Texas Education Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Prepaid Higher Education Tuition Board (Board) announces its Request for Proposals (RFP No. 178d) for master trust custodian services in connection with the administration of the prepaid higher education tuition program. The funds to be managed are funds from contracts and investments of the program known as the Texas Tomorrow Funds (Program). The Comptroller and Board request proposals for master trust custodian services for the Program. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about July 31, 2007, with transition complete, if necessary, and services available on or before September 1, 2007.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, May 25, 2007, after 10:00 a.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) after 10:00 a.m. on Friday, May 25, 2007. The website address is http://esbd.tbpc.state.tx.us

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, June 8, 2007. Respondents are encouraged to fax Non-Mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or before Friday, June 15, 2007, the Comptroller expects to post responses to questions as a revision to the electronic notice of the issuance of the RFP. Late Non-mandatory Letters of Intent and Questions received after the deadline will not be considered; all respondents are solely responsible for ensuring timely receipt of Questions and Letters of Intent in the Issuing Office.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (in ROOM G24) no later than 2:00 p.m. (CZT), on Friday, June 29, 2007. Late proposals received after this time and date will not be considered; all respondents are solely responsible for ensuring timely receipt of proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s). The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - Friday, May 25, 2007, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent & Questions Due - June 8, 2007, 2:00 p.m. CZT; Official Responses to Questions posted - June 15, 2007; Proposals Due - June 29, 2007, 2:00 p.m. CZT; Contract Execution - July 31, 2007, or as soon thereafter as practical; Transition Complete and Services Available under Contract - September 1, 2007.

TRD-200701895
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: May 16, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/21/07 - 05/27/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/21/07 - 05/27/07 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200701863
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 15, 2007

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Credit Union Department

Applications for a Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department (Department) and is under consideration:

An application was received from South Texas Credit Union (Kenedy) seeking approval to merge with KCTA Federal Credit Union (Kenedy), with the latter being the surviving credit union.

An application was received from America's Credit Union (Garland) seeking approval to merge with Imco Employees Credit Union (Garland). America's Credit Union will be the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200701893
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 16, 2007

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Smart Financial Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, or attend school in and businesses located in a designated underserved area of Harris County, Montgomery County, or Fort Bend County, Texas, to be eligible for membership in the credit union.

An application was received from EDS Credit Union, Plano, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in the United States within a ten (10) mile radius of the EDS Credit Union branch located at 400 Renaissance Center, Detroit, Michigan 48243, to be eligible for membership in the credit union.

An application was received from First Service Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Deep Marine Technology Inc. who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200701892
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 16, 2007

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Edinburg Teachers Credit Union, Edinburg, Texas - See *Texas Register* issue, dated February 2, 2007.

Application(s) for a Merger or Consolidation - Approved

GAF Federal Credit Union (Dallas) and Neighborhood Credit Union (Dallas) - See *Texas Register* issue, dated March 30, 2007.

DNC Federal Credit Union (Mineral Wells) and EECU (Fort Worth) - See *Texas Register* issue, dated March 30, 2007.

Articles of Incorporation - 50 Years to Perpetuity - Approved

Baylor Health Care Systems Credit Union, Dallas, Texas

TRD-200701894
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 16, 2007

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 25, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 25, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Ameri-Forge Limited; DOCKET NUMBER: 2007-0227-IWD-E; IDENTIFIER: RN102075686; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: metal fabricating; RULE VIOLATED: 30 Texas Administrative Code (TAC) §305.125(a), Texas Pollutant Discharge Elimination System (TPDES)

Permit Number 03767, Effluent Limitations and Monitoring Requirements for Outfall 001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits at outfall 001; PENALTY: $7,080; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2007-0124-AIR-E; IDENTIFIER: RN100219955; LOCATION: Hansford County, Texas; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §101.10 and Texas Health & Safety Code (THSC), §382.085(b), by failing to include emissions on an emissions inventory questionnaire; 30 TAC §106.4(c) and §106.512(2)(B) and THSC, §382.085(b), by failing to maintain emission control equipment in good condition and operated properly; 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to apply for renewal of new source review permit number 19317; 30 TAC §101.20(1), 40 Code of Federal Regulations §60.18(c)(2) and (e), and THSC, §382.085(b), by failing to operate the flare with a flame present at all times; 30 TAC §122.145(2)(A) and THSC, §382.085(b), by failing to include all instances of deviations on a semiannual deviation report; and 30 TAC §101.27, the Code, §5.702, and THSC, §382.085(b), by failing to pay outstanding emission fees; PENALTY: $41,440; Supplemental Environmental Project (SEP) offset amount of $16,576 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Dome Hydrocarbons, L.C.; DOCKET NUMBER: 2007-0207-AIR-E; IDENTIFIER: RN100214352; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: industrial organic chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) O-01572, Special Condition 12, and THSC, §382.085(b), by failing to submit an annual compliance certification; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP O-01572, Special Condition 12, and THSC, §382.085(b), by failing to submit a timely deviation report; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: City of Miami; DOCKET NUMBER: 2005-0447-MWD-E; IDENTIFIER: RN101916708; LOCATION: Miami, Roberts County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11027001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; and 30 TAC §305.125(17) and TPDES Permit Number 11027001, Monitoring and Reporting Requirements Number 1, by failing to submit annual sludge reports; PENALTY: $12,250; Supplemental Environmental Project (SEP) offset amount of $9,800 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: M R K Investment Corporation dba El Primero Training Center; DOCKET NUMBER: 2007-0114-PWS-E; IDENTIFIER: RN101440691; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: racehorse training and breeding operation with a public water supply; RULE VIOLATED: 30 TAC §290.39(m), by failing to provide written notification to the commission of the startup of a new public water supply system; and 30 TAC §290.42(o)(3), by failing to provide disinfection equipment; PENALTY: $600; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Nalco Company; DOCKET NUMBER: 2007-0306-AIR-E; IDENTIFIER: RN102895745; LOCATION: Sugar Land, Fort Bend County, Texas; TYPE OF FACILITY: specialty chemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 2590, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $4,750; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Palo Duro Service Company, Inc.; DOCKET NUMBER: 2007-0390-PWS-E; IDENTIFIER: RN101185684; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement or an exception to the easement requirement; 30 TAC §290.41(c)(3)(N), by failing to provide an operable flow meter; 30 TAC §290.46(f), by failing to maintain records of water works operations; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; and 30 TAC §290.110(b)(4), by failing to maintain a minimum of 0.2 milligrams per liter chlorine residual; PENALTY: $420; ENFORCEMENT COORDINATOR: Christopher Miller, (512) 239-6580; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: John Tamez dba Plastics International North; DOCKET NUMBER: 2005-1274-MSW-E; IDENTIFIER: RN102854478; LOCATION: Canutillo, El Paso County, Texas; TYPE OF FACILITY: plastics grinding and recycling; RULE VIOLATED: 30 TAC §327.3(b), by failing to notify the agency as soon as possible but no later than 24 hours after determination that a reportable discharge or spill has occurred; 30 TAC §330.5(a), by failing to store solid waste in a manner so as to prevent the creation and maintenance of a nuisance and the endangerment of human health and welfare of the environment; 30 TAC §330.22, by failing to store all solid waste in a manner so as to prevent a fire, safety, or health hazard; and 30 TAC §327.5(a) and the Code, §26.266(a), by failing to immediately abate and contain a spill or discharge and cooperate fully with the executive director and the local incident command system; PENALTY: $21,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(9) COMPANY: Pulte Homes of Texas, L.P.; DOCKET NUMBER: 2007-0299-EAQ-E; IDENTIFIER: RN104206438; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: single family subdivision construction site; RULE VIOLATED: 30 TAC §213.4(g)(3) and Edwards Aquifer Protection Program (EAPP) Files numbers 2156.00 and 2156.01, Standard Conditions Number 2, by failing to submit to the TCEQ proof of recordation; 30 TAC §213.4(j)(2) and EAPP File Numbers 2156.00 and 2156.01, Standard Conditions Number 4, by failing to submit and receive approval of modifications to an EAPP prior to performing a regulated activity; 30 TAC §213.5(b)(4)(D)(ii)(II) and EAPP File Numbers 2156.00 and 2156.01, Standard Conditions Number 14, by failing to submit to the TCEQ written documentation from a Texas licensed professional engineer certifying that the permanent best management practices (BMP) or measures were constructed as designed; 30 TAC §213.4(k) and EAPP File Numbers 2156.00 and 2156.01, Standard Conditions Numbers 15 and 17, by failing to maintain permanent BMPs after construction; 30 TAC §213.4(k) and EAPP File Numbers 2156.00

and 2156.01, Standard Conditions Number 6, by failing to maintain temporary erosion and sedimentation controls prior to construction; and 30 TAC §205.6 and the Code, §5.702 and §26.0291, by failing to pay outstanding general permit storm water fees and associated late fees; PENALTY: $11,000; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Rice Water Supply and Sewer Service Corporation; DOCKET NUMBER: 2007-0229-MWD-E; IDENTIFIER: RN102997343; LOCATION: Navarro County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11028001, Final Effluent Limitations and Monitoring Requirements Number 1, 3, and 6 for Outfall 001A, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; and 30 TAC §305.125(17), TPDES Permit Number 11028001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: $13,100; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200701874

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 15, 2007

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Notice of Amendments to the Air Quality Standard Permit for Electric Generating Units

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing amendments to the air quality standard permit for electric generating units, under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.05195, Standard Permit, and Title 30 Texas Administrative Code (30 TAC) Chapter 116, Subchapter F, Standard Permits. The amended air quality standard permit became effective May 16, 2007.

Copies of the amended standard permit may be obtained from the TCEQ Web site at *http://www.tceq.state.tx.us/permitting/air/newsourcereview/combustion/egu_sp.html* or by contacting the TCEQ, Office of Permitting, Remediation, and Registration, Air Permits Division, at (512) 239-1250.

OVERVIEW OF AIR QUALITY STANDARD PERMIT AMENDMENTS

The amendments to the standard permit increase the nitrogen oxides (NO_x) emission limit for electric generating units (EGUs) with a capacity of 250 kilowatts (kW) or less, located in East Texas and operated for more than 300 hours per year. The amendments also increase the NO_x emission limit for EGUs that combust landfill gas, digester gas, or stranded oilfield gas. The amendments provide a more flexible NO_x emission limit during periods of reduced load, and provide an exemption from NO_x limits during periods of extremely low ambient temperatures. The amendments provide more flexibility concerning the use of renewable fuels. An amendment eliminates the hydrogen sulfide (H_2S) concentration limit for gaseous fuels, which is not needed because gaseous fuels are subject to a total sulfur concentration limit which is protective. The amendments also exclude boilers from using the EGU standard permit, as the recently issued boiler standard permit is more appropriate for that type of combustion equipment. Other amendments improve the organization, readability, and enforceability of the standard permit.

PUBLIC NOTICE AND COMMENT PERIOD

In accordance with 30 TAC §116.605, Standard Permit Amendment and Revocation, the TCEQ published notice of the proposed amended standard permit in the April 7, 2006, issue of the *Texas Register* (31 TexReg 3081). The notice was also published in the newspapers of the largest general circulation in Austin, Houston and Dallas on April 7, 2006. The public comment period was from the date of publication until 5:00 p.m. on May 10, 2006.

PUBLIC MEETING

A public meeting on the proposed amendments was held on May 10, 2006, at 1:30 p.m., at the TCEQ, Building F, Room 2210, 12100 Park 35 Circle, Austin, Texas.

ANALYSIS OF COMMENTS

Written comments were received from Central Pallet, Inc., Corrugated Services, L.P., Cratech, Inc., the Engine Manufacturers Association (EMA), Good Company Associates (on behalf of the Texas Distributed Generation Working Group), Greatwide Distribution Logistics, GWG Wood Group, HCS Group, Inc., Letco Group L.P., Lloyd Gosselink on behalf of Safe Fuels, Inc. (Lloyd Gosselink), Service Waste Inc., Solar Turbines, Inc., Sunergie, Inc., Texas Renewable Energy Industries Association (TREIA), United States Department of Energy (US DoE), White's Wood Group, Inc., and Zilkha Biomass Energy, L.L.C.(Zilkha). Oral comments were received from Good Company Associates, representing the Texas Distributed Generation Working Group. The commenters generally suggested changes to the proposed amendments to the standard permit.

Cratech, Inc. indicated support for the proposed amendments, specifically concerning the use of gaseous fuels derived from biomass.

The commission appreciates the support.

Lloyd Gosselink and TREIA generally supported the proposed inclusion of biodiesel as an accepted type of renewable fuel under the standard permit.

The commission appreciates the support.

Lloyd Gosselink and TREIA commented that under the proposed standard permit, liquid renewable fuels such as biodiesel are treated in the same manner as conventional, non-renewable liquid fuels, while gaseous renewable fuels would be allowed to meet a proposed emission limit of 1.90 lb/MWh. Lloyd Gosselink and TREIA commented that all renewable fuels should be treated similarly, regardless of whether they are liquid renewable fuels or gaseous renewable fuels. Lloyd Gosselink and TREIA commented that the use of all forms of renewable fuel should be encouraged.

The commission concurs that, considering the direct and indirect benefits of renewable fuels, it is appropriate that liquid renewable fuels be categorized with gaseous renewable fuels under the proposed 1.90 lb/MWh standard. The commission has modified the standard permit conditions accordingly. However, in practice, it may be difficult for liquid renewable fuels to achieve the 1.90 lb/MWh standard without a high degree of emission control. Liquid renewable fuels may be more practical to employ in West Texas areas, which are subject to less stringent NO_x limitations. Although the commission desires to encourage the use of renewable fuels, the commission must carefully consider the environmental impacts of each authorized fuel type, particularly in areas such as East Texas, which are highly sensitive to NO_x emissions and corresponding ozone nonattainment concerns.

Zilkha, Sunergie Inc., and TREIA commented that the standard permit should allow use of renewable solid fuels (such as biomass). Zilkha stated that, as proposed, the standard permit was biased towards renewable generation powered by liquid and gaseous fuels. Zilkha and

Sunergie Inc. suggested that emissions from solid renewable fuels could be minimized by only allowing those renewable fuels that contain no foreign additives not found in the fuel's natural state.

The commission has considered the possible inclusion of solid renewable fuels as an allowed fuel type under the standard permit. The varied composition of solid renewable fuels and the technical complexity associated with the handling and combustion of those fuels makes it difficult to address such a broad category in a standard permit. For example, various types of solid fuels may have widely varying concentrations of sulfur, chlorine, nitrogen, mercury, or other constituents, that could result in unacceptable emissions of these compounds. In addition, combustion of some solid fuels may result in excessive particulate matter emissions or excessive organic hazardous air pollutant (HAP) emissions. The use of solid fuels also produces emissions from material handling that may be significant. These factors make a case-by-case, detailed review necessary to ensure protection of human health and the environment. For this reason, it is not suitable to authorize combustion of all solid renewable fuels in the standard permit. In addition, solid fuels tend to be used to fire boilers, rather than units such as engines or turbines, and the commission has determined that boilers should be authorized under the recently issued Air Quality Standard Permit for Boilers (Boiler standard permit), not the Air Quality Standard Permit for Electric Generating Units (EGU standard permit). No changes were made in response to this comment.

HCS Group, Inc., Central Pallet, Inc., Corrugated Services, L.P., Service Waste, Inc., White's Wood Group, Letco Group, L.P., Greatwide Distribution Logistics, and GWG Wood Group commented that wood should be an allowed fuel type under the standard permit. HCS Group, Inc. commented that the overall societal benefits of wood as a fuel make it a more attractive fuel than natural gas. Some examples of the societal benefits that HCS Group, Inc. cited include: reduced consumption of fossil fuels, no net increase of carbon content above ground, reduced landfill burdens, and reduced transportation impacts associated with disposal of wood waste. Central Pallet, Inc. commented that wood-fueled power projects would increase energy independence and improve energy supply reliability and efficiency. GWG Wood Group commented that use of wood would reduce consumption of fossil fuels. Central Pallet, Inc., GWG Wood Group, and White's Wood Group commented that small CHP plants using wood as fuel could deliver greater energy efficiency than larger biomass to energy plants. Corrugated Services, L.P., Service Waste, Inc., Letco Group, L.P., and Greatwide Distribution Logistics commented that allowing wood as a fuel type would reduce the volume of wood waste directed to landfills. Central Pallet, Inc. and Service Waste, Inc. recommended an emission limit of 0.55 lb NO_x/MWh for wood fired units. HCS Group, Inc. and Corrugated Services, LP recommended an emission limit of 1.90 lb NO_x/MWh for wood fired units. HCS Group, Inc. suggested an emission limit of 0.55 lb NO_x/MWh as an alternative if the 1.90 lb/MWh limit was not feasible. HCS Group, Inc. commented that other pollutants (such as particulate matter, HAPs, and others) could be accounted for and addressed through the PI-1S registration process.

Although waste wood does appear to be a promising fuel source with considerable benefits, after careful consideration the commission has determined that it would not be appropriate to authorize wood-fired EGUs under this standard permit. This is due to a combination of technical and strategic factors. The EGU standard permit was primarily intended to authorize units such as turbines, engines, and fuel cells. By their nature, these units cannot typically operate on solid fuels, and solid fuels were never contemplated during the development of the original EGU standard permit. The commission does not have a large body of information about the range of emissions from wood-fired units and associated material handling and fugitive sources. Due to this current lack of information, an attempt to authorize wood-fired units in a standard permit at this time would require a number of stringent conditions and restrictions that would result in a very limited authorization which would most likely serve little practical use. At the present time, a case-by-case NSR permit is the best means to ensure protection of human health, while simultaneously allowing adequate operational flexibility for wood-fired units.

In addition, the commission has recently issued a standard permit for boilers, and even if the technical and environmental factors associated with wood-fired boilers can be resolved such that authorization under a standard permit would be feasible, it would be more appropriate for those units to be addressed under the Boiler standard permit than the EGU standard permit. The boiler standard permit was developed specifically to address boilers, and includes emission standards and monitoring requirements that are specifically intended for boilers. It would be inappropriate for the EGU standard permit to overlap with the boiler standard permit. For these reasons, the commission has added a restriction to exclude boilers from claiming the EGU standard permit as a method of authorization. Boilers will need to be authorized under the boiler permit by rule in 30 TAC §106.183, Boilers, Heaters, and Other Combustion Devices, the boiler standard permit, or a case-by-case NSR permit.

US DoE commented that the proposed standard permit did not allow for the use of a comprehensive mix of biomass fuels. US DoE commented that allowing a broader range of biomass fuels would provide more flexibility for electrical production, and co-feeding of biomass and biomass-derived synthesis gas with fossil fuels would reduce NO_x, SO_x, and H_2S emissions. US DoE recommended that the definition of renewable fuels be revised to include woody biomass; forest, yard, or agricultural crop residues; grasses; biomass synthesis gas; and black liquor from pulp mills.

The commission encourages the use of renewable fuels, including fuels derived from biomass. The standard permit would allow the use of gaseous fuels derived from biomass. However, the use of fuels such as grasses, crop residues, or black liquor poses a more complex situation that makes a case-by-case review of those fuels necessary to ensure protection of human health and the environment. Therefore, the commission declines to incorporate those fuels into the standard permit.

EMA indicated general support for amending the NO_x emission limits for small EGUs in East Texas. However, EMA commented that the proposed changes are too narrow in scope, and did not sufficiently address larger units (units having a capacity greater than 100 kW but equal to or less than 2 MW). EMA commented that even at a NO_x emission limit of 0.5 lb/MWh, a 100% compliance rate for engines is not feasible due to variations in fuel composition, operating conditions, and ambient environmental factors. EMA also commented that the cost of emission reduction systems that could meet those levels is not economically feasible. EMA recommended a NO_x standard for distributed generation (DG) sources in East Texas in the range of 1.4 - 2.2 lbs/MWh, for units with a capacity of 2 MW or less. EMA commented that these higher emission limits would allow wider use of high efficiency engines with CHP, which EMA stated are more efficient power producers than central station power plants, microturbines, or fuel cells.

The commission acknowledges that the proposed changes were limited. NO_x emissions in East Texas are a major concern, and the standard permit is intended to ensure that DG projects in East Texas do not interfere with attainment of the ozone standard. The commission does not support EMA's proposed NO_x standard of 1.4 - 2.2 lb/MWh, for units with a capacity of 2 MW or less. A num-

ber of existing technologies are able to achieve significantly better NO_x performance than EMA's suggested limit, at reasonable cost. However, the commission has increased the capacity threshold for the 0.14 lb/MWh standard to 250 kW instead of the proposed 100 kW. This change will make it easier to authorize small engines and turbines that have minimal NO_x emissions, while maintaining appropriate control over NO_x sources in East Texas. The commission selected a 250 kW transition point because there are commercially available EGUs in this size range that can meet the 0.14 lb/MWh limit; a review of commission records indicates that there was minimal deployment of units between 250 kW - 1 MW even when the 0.47 lb/MWh standard applied; and units smaller than 250 kW are very small sources of NO_x even when operating under a 0.47 lb/MWh limit.

Zilkha, Sunergie, Inc., and TREIA commented that the proposed increase in the allowed East Texas NO_x limit for very small units (those equal to or less than 100 kW) does not sufficiently address the difficulty of controlling small units. Zilkha and Sunergie, Inc. recommended a *de minimis* threshold of 35 tons per year, to allow small units with relatively insignificant annual emissions to qualify for the standard permit. Zilkha and Sunergie, Inc. also recommended that the capacity level for the proposed 0.47 lb/MWh standard be increased from 100 kW to 5 MW.

The commission does not agree that the standard permit should employ a *de minimis* NO_x threshold of 35 tons per year. The cumulative effect of a number of 35 tpy units could be significant. The commission also does not agree that the capacity level for the 0.47 lb/MWh standard should be raised to 5 MW, because this could also result in significant NO_x emissions. However, the commission has revised the standard permit to allow units up to 250 kW to comply with the 0.47 lb/MWh emission limit.

Good Company Associates (on behalf of the Texas Distributed Generation Working Group) commented that technology in the distributed generation industry has not progressed according to the 2001 forecasts that the East Texas 0.14 lb/MWh standard was based upon. Good Company Associates commented that the proposed changes are not sufficient to address the needs of the distributed generation industry.

The commission acknowledges that distributed generation technology has not progressed to the extent expected when the 0.14 lb/MWh standard was established. However, technology is available that can meet the terms and conditions of the EGU standard permit, at reasonable cost. The increased capacity threshold (250 kW) associated with the 0.14 lb/MWh standard will make it easier for small engines and turbines to be authorized under the standard permit. The increased NO_x limit for units firing landfill gas, digester gas, and stranded oilfield gas, will make the standard permit more functional for those units. The adopted standard permit also provides increased flexibility for units operating on renewable fuels, and more flexibility for situations involving reduced loads and cold ambient temperatures. However, the EGU standard permit is not intended to cover every project, and applicants maintain the option to obtain authorization under a case-by-case permit in cases where the EGU standard permit is not suitable.

Good Company Associates commented that there are no mature technologies that can meet and sustain the 0.14 lb/MWh NO_x emission limit without the use of additional control technologies (such as the combined use of exhaust gas recirculation and selective catalytic reduction (SCR)). Good Company Associates commented that application of SCR typically costs between $25,000 - 40,000 per ton of NO_x controlled, which is several times the $5,500 per ton that TCEQ pays for NO_x reductions under the TERP program. Good Company Associates also commented that the capital costs for continuous monitoring equipment for these size projects ranges between $150,000 - 200,000, and does not include expensive annual operating and maintenance costs.

The commission does not agree that there are no technologies that can meet and sustain the 0.14 lb/MWh emission limit. Equipment such as the Solar Mercury turbine, the Lean One engine from Blue Point Energy, engine control packages from Attainment Technologies Inc., and catalytic turbine technology from Catalytica, Inc., have the potential to meet the emission standard. In some cases, additional control or CHP credit may be needed in addition to the base unit. Additional low-NO_x technologies are being developed by several vendors. The costs associated with the operation and maintenance of the various controls will vary greatly depending on the individual project. In cases where meeting the standard permit is not economically feasible, applicants may apply for a case-by-case NSR permit, where specific costs can be further considered in the Best Available Control Technology (BACT) determination. No changes were made in response to this comment.

Good Company Associates commented that, based on a review of certified emission results for nearly 200 internal combustion engines in California's SCAQMD, the only systems found to meet the 0.14 lb/MWh limit without aftertreatment were 4 natural gas engines with a capacity of 100 kW or less. Of units between 100 kW - 10 MW, only one engine was close to meeting the 0.14 lb/MWh standard. The average emission performance for the other units was over 13.42 lb/MWh.

The commission anticipates that a majority of in-service engines would have NO_x emissions exceeding the East Texas 0.14 lb/MWh standard. The EGU standard permit does not specify the type of equipment that must be used (engine, turbine, fuel cell, etc.) so in cases where an engine is unable to meet the terms of the standard permit, the registrant could consider other equipment types, or consider applying for a case-by-case permit. No changes were made in response to this comment.

Good Company Associates commented that the February 2005 EPA standard for new stationary combustion turbines with a capacity under 30 MW is 1.0 lb NO_x/MWh. Good Company Associates commented that EPA considered the use of SCR in setting the NO_x standard, but EPA determined that the costs for SCR were high compared to the incremental difference in emissions. Good Company Associates also noted that EPA determined that SCR and other control measures could be infeasible on small turbines because of space considerations and the small size of the turbine combustion chamber. Good Company Associates commented that the only turbine that can approach the 0.14 lb/MWh standard is the Solar Mercury 50, which is capable of NO_x emissions as low as 0.17 lb/MWh, but still cannot achieve the standard without the use of CHP credits or additional emission controls.

Federal New Source Performance Standards (NSPS) such as 40 CFR Part 60, Subpart KKKK, are essentially a technology "floor" for new and modified equipment. The NSPS standards do not take into account local issues with air quality, such as the commission's current efforts to address ozone nonattainment in Texas. A standard permit is required to consider protection of human health and the environment in more specific ways than federal NSPS regulations. It is not unusual for control requirements associated with NSR permits and standard permits to exceed control requirements of federal NSPS regulations. Concerning the Solar Mercury turbine, although the commission does not yet have test data on that model, it is anticipated that the installed performance of the unit may achieve the 0.14 lb/MWh standard directly, without use of CHP or additional controls. However, the commission expects that, in most installations, CHP would be applied to recover waste heat, which would further facilitate compliance with the standard. No changes have been made in response to this comment.

Good Company Associates commented that the 0.14 lb/MWh standard is the most restrictive NO_x emissions requirement for distributed generation systems in the country, and that this stringent emission limit is hindering the Texas market for distributed generation. Good Company Associates commented that a relaxed emission standard for distributed generation could actually result in an overall reduction of NO_x emissions, citing a 2003 study by Hadley and Van Dyke of the Oak Ridge National Laboratory. The study showed that even if the NO_x emission limit for distributed generation was increased, those distributed generation emissions would be offset by reduced emissions from relatively high-emitting "peaking" power plants.

The commission acknowledges that the 0.14 lb/MWh standard is aggressive for small units, but emission limitations in other states with similar air pollution concerns are also becoming more stringent. For example, the California Air Resources Board's 2007 NO_x emission standard for distributed generation certification is 0.07 lb/MWh. As an overall performance level, 0.14 lb/MWh is equivalent to BACT for large gas-fired power plants, and this BACT level has been applied for a number of years. Distributed generation projects that cannot meet the standard permit can be authorized using the standard case-by-case NSR permitting process. The commission does not dispute the possibility that a higher NO_x emission limit in the standard permit could allow faster implementation of distributed generation in Texas, and could conceivably result in lower overall NO_x emissions. However, the complexity of determining the net effect, and the difficulty in enforcing the reductions at peaking units, make it difficult to rely on such a strategy for regulatory purposes. No changes were made in response to this comment.

Good Company Associates commented that the East Texas NO_x emission limit for units less than 10 MW should be restored to the 0.47 lb/MWh standard, with a step down to 0.30 lb/MWh in the year 2010. Good Company Associates commented that the standard could be reduced to 0.15 lb/MWh in 2012 following an appropriate technical review.

Although the commission appreciates the commenter's proposal of specific emission standards, the commission does not agree with the commenter's suggested emission standards and associated time lines. The maintenance of the 0.47 lb/MWh standard until 2010, and the suggested step down to 0.30 lb/MWh, are not reflective of the NO_x performance that can be achieved with current technology. Although not all equipment can meet the limits in the standard permit, sufficient technology is available to allow projects to be implemented in compliance with the standard permit. The standard permit is intended to promote the use of clean technology, especially in the East Texas region where NO_x is a major concern as an ozone precursor. If an applicant has a need to use equipment that is unable to meet the emission limits in the standard permit, that equipment can be authorized under the case-by-case NSR permitting process.

EMA indicated general support for amending the NO_x emission limit for units burning landfill, digester, and stranded oilfield gas. This limit was proposed to be increased from 1.77 lb/MWh to 1.90 lb/MWh. However, EMA recommended a NO_x emission limit of 9.3 lb/MWh, to ensure that waste-to-energy projects can be successfully installed and operated, and to ensure the maximum benefits of waste-to-energy projects can be realized. EMA commented that this higher emission limit is necessary due to the large variability in these types of fuels and the technical infeasibility of catalyst based aftertreatment.

The commission does not concur with EMA's proposed NO_x emission limit of 9.3 lb/MWh for units burning landfill, digester, and stranded oilfield gas. The proposed adjustment to 1.90 lb/MWh is necessary to account for efficiency losses that were not accounted for in the original standard permit, but the proposed adjustment does not reflect a fundamental change in the expected NO_x performance of units under the standard permit. The commission believes that EMA's proposed increase to 9.3 lb/MWh is not reflective of the NO_x performance many units are already achieving, and could potentially result in substantial NO_x emissions in the East Texas area. The commission declines to make the suggested change.

Solar Turbines, Inc. commented that, although the proposed 1.90 lb NO_x/MWh emission limit for units burning landfill, digester, and stranded oilfield gas would be an improvement over the current emission limit, the proposed 1.90 lb/MWh limit would preclude some common alterative fuels from qualifying for the standard permit. Solar Turbines, Inc. recommended a limit of 5.5 lb/MWh. Solar Turbines, Inc. commented that turbines burning alternative fuels have a wide-ranging emissions profile, due to the variability in the fuel characteristics.

The commission acknowledges that some fuels may not be capable of meeting the proposed 1.90 lb/MWh emission limit. However, the standard permit is not intended to cover all applications. Although an emission limit of 5.5 lb/MWh could allow a wider range of fuels, the potential NO_x emissions resulting from such a limit could be excessive in the sensitive East Texas area. The proposed 1.90 lb/MWh standard is sufficient to cover most landfill, digester, and oilfield applications, while maintaining an appropriate degree of NO_x control. Situations which are not able to meet the conditions of the standard permit may be authorized under a case-by-case NSR permit, where the control technology and environmental impacts can be reviewed in detail.

Solar Turbines, Inc. also commented that the standard permit should specify that the emission limits only apply at full load, plus a nominal range such as +/- 10%.

The commission acknowledges that EGUs operating at reduced load may have difficulty meeting the output-based emission standards. The emission standards in the standard permit were intended to apply to units operating at or near their intended design load. The commission does not support the complete elimination of emission limits for conditions of reduced load, but the commission has added a provision under new subsection (4)(H) to provide more flexibility for units operating at reduced load. If the unit is operating at less than 80% of rated load, the modified NO_x emission standard will be determined by multiplying the unit's rated output (in MW) by the applicable NO_x emission limit in subsections (4)(D) - (4)(F). This will result in an hourly NO_x emission limit in lb/hour, which would be equivalent to the NO_x mass emission rate that the unit would be allowed at full load. Owners or operators must maintain records to demonstrate that the unit meets the lb/hr NO_x emission limit under reduced load operating conditions.

Solar Turbines, Inc. also commented that the emission limits should only apply at ambient temperatures above 0 degrees Fahrenheit, as is typically warranted by the manufacturers.

The commission acknowledges that extremely low ambient temperatures can have a detrimental effect on emissions, and some manufacturers will not certify or warranty emissions performance under those conditions. The commission has added a provision under new subsection (4)(H) to specify that the NO_x emission limits do not

apply when ambient temperatures at the location of the EGU are below zero degrees Fahrenheit.

Solar commented that Section (3)(E) of the standard permit should include a reference to 40 CFR Part 60, Subpart KKKK for new, modified, and reconstructed units.

The commission concurs with the comment and has made a change to the standard permit to reference Subpart KKKK.

Good Company Associates commented that wider application of distributed generation can reduce overall energy consumption, by recovering waste heat, and/or by reducing line power losses that result from delivering power from a remote centralized power station. Good Company stated that the line losses average 5 - 10%, and can exceed 25% on hot days. Good Company recommended that TCEQ and Texas A&M Energy Systems Laboratory use modeling to quantify the energy efficiency benefits of distributed generation and treat the reduced line losses as SIP-creditable emission reductions.

This comment does not directly relate to the proposed changes to the standard permit. This comment concerns emissions calculations related to the SIP, which is not an appropriate subject matter for consideration in adopting the amendments to the electric generating unit standard permit. No changes to the standard permit were made in response to this comment.

Good Company Associates commented that wider implementation of distributed generation could help manage load and prevent rolling blackouts, such as the event on April 17, 2006.

Although the commission concurs that appropriate implementation of distributed generation can improve the reliability of the state's electric grid, the commission's primary responsibility is to address the environmental factors associated with authorizing EGUs. No changes were made in response to this comment.

TRD-200701872
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 15, 2007

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Notice of District Petition

Notices issued May 11, 2007.

TCEQ Internal Control No. 01052007-D09; GGP-Bridgeland, L.P. (the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 493 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Capital Farm Credit, FLCA, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with evidence of lien holder's consent to the creation of the proposed District; (3) the proposed District will contain approximately 644.46 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2006-1179, effective December 5, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $35,870,000 for water, wastewater and drainage facilities, and $3,600,000 for recreational facilities.

TCEQ Internal Control No. 01092007-D05; CW SCOA WEST, L.P. (the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 501 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 662.83 acres located in Harris County, Texas; and (3) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2006-1079, effective October 30, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition indicates that there is one lien holder, First Bank & Trust, on the property to be included in the proposed District. The Petitioner has provided the TCEQ with a certificate evidencing the lien holder's consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $47,450,000.

TCEQ Internal Control No. 01092007-D04; CW SCOA WEST, L.P. (the "Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 502 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 714.69 acres located in Harris County, Texas; and (3) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. The petition indicates that there is one lien holder, First Bank & Trust, on the property to be included in the proposed District. The Petitioner has provided the TCEQ with a certificate evidencing the lien holder's consent to the creation of the proposed District. By Ordinance No. 2006-1080, effective October 30, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $51,580,000.

TCEQ Internal Control No. 01052007-D10; GGP-Bridgeland, L.P. (the "Petitioner") filed a petition for creation of Harris County Water Control and Improvement District No. 158 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Capital Farm Credit, FLCA, on the property to be included in the proposed District, and the Petitioners have provided the TCEQ with a certificate evidencing the lien holder's consent to the creation of the proposed District; (3) the proposed District will contain approximately 3,163.31 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2006-1249, effective December 26, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost

of the project and from the information available at the time, the cost of the project is estimated to be approximately $41,260,000 for wastewater and drainage facilities, and $16,320,000 for recreational facilities.

TCEQ Internal Control No. 01052007-D11; GGP-Bridgeland, L.P. (the "Petitioner") filed a petition for creation of Harris County Water Control and Improvement District No. 159 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Capital Farm Credit, FLCA, on the property to be included in the proposed District, and the Petitioners have provided the TCEQ with a certificate evidencing the lien holder's consent to the creation of the proposed District; (3) the proposed District will contain approximately 3,082.23 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2006-1250, effective December 26, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $38,830,000 for wastewater and drainage facilities, and $18,100,000 for recreational facilities.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to TCEQ, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200701909
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 16, 2007

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 25, 2007.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 25, 2007.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: 125 Max Dry Cleaning Center, LLC dba 1.25 Max DryClean; DOCKET NUMBER: 2006-1497-DCL-E; TCEQ ID NUMBER: RN103992012; LOCATION: 12921 Farm-to-Market Road 1960 West, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Ali Samnani dba City Star Texaco; DOCKET NUMBER: 2004-1634-PST-E; TCEQ ID NUMBER: RN102042710; LOCATION: 5400 Brentwood Stair Road, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks ("USTs"); PENALTY: $3,330; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Gilberto D. Reta dba Rasso Cleaners; DOCKET NUMBER: 2006-1164-DCL-E; TCEQ ID NUMBER: RN104462528; LOCATION: 202 Pleasanton Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the Facility's registration by completing and submitting the required form to the TCEQ for the Facility; PENALTY: $1,185; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: John Tran dba Quality Cleaners and dba Deluxe Drycleaning; DOCKET NUMBER: 2006-1428-DCL-E; TCEQ ID NUMBERS: RN103953683, RN10413744, RN104137518, and RN104137435; LOCATION: 2844 7th Street, Port Arthur; 535 7th Street, Port Arthur; 1920 9th Avenue, Port Arthur; 3889 Main Avenue, Groves, Jefferson County, Texas; TYPE OF FACILITY: dry cleaning and/or drop station facilities; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for dry cleaning and drop station Facilities; PENALTY: $900; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Judy Davis dba Judy's Kountry Kitchen; DOCKET NUMBER: 2006-0063-PST-E; TCEQ ID NUMBER: RN102260767; LOCATION: Highway 75 and Farm-to-Market Road 315, Poyner, Henderson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b) and Agreed Order Docket No. 2004-1480-PST-E, Ordering Provision No. 2.a., by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(a)(1)(A), (b)(2)(A)(i)(III) and (d)(1)(B)(ii); and TWC, §26.3475(a) and (c)(1), by failing to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping and other underground ancillary equipment; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at the Facility; and 30 TAC §334.22(a); Agreed Order, Docket No. 2004-1480-PST-E; Ordering Provision No. 2.b.; and TWC, §5.702, by failing to pay outstanding UST fees for TCEQ Account No. 0054411U for fiscal years 2003, 2004, 2005, and 2006; PENALTY: $20,150; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Omar Rodriguez dba R&B Services; DOCKET NUMBER: 2002-0694-LII-E; TCEQ ID NUMBER: RN103341053; LOCATION: 6012 Maravillosa, 358 Cowen Terrace, 348 Cowen Terrace, 354 Cowen Terrace, and 3451 Pablo Kisel Boulevard, Brownsville, Cameron County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a) and TWC, §34.007(a) (now TWC, §37.003 and Texas Occupations Code ("TOC"), §1903.251, by failing to obtain an irrigator's license prior to completing installations at five different locations between June 2001 and October 2001; PENALTY: $1,250; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Paul Anthony Pasillas dba Eldorado Cleaners; DOCKET NUMBER: 2006-1579-DCL-E; TCEQ ID NUMBER: RN102918547; LOCATION: 11107 West Avenue, San Antonio, Bexar County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e); and THSC, §374.102, by failing to renew the Facility's registration by completing and submitting the required registration form to the TCEQ; PENALTY: $1,185; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas, 78233-4480, (210) 490-3096.

(8) COMPANY: P&N Star Enterprises, Inc. dba Dry Clean City; DOCKET NUMBER: 2006-1399-DCL-E; TCEQ ID NUMBER: RN103961074; LOCATION: 205 North Denton Tap Road, Suite 100, Coppell, Dallas, County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e), and THSC, §374.102, by failing to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c) and TWC, §5.702, by failing to pay Dry Cleaner registration fees for TCEQ Financial Administration Account No. 24003884 and associated late fees for fiscal years 2005 and 2006; PENALTY: $1,185; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: SNS Enterprises, Inc. dba Fashion Touch; DOCKET NUMBER: 2006-1149-DCL-E; TCEQ ID NUMBER: RN102188869; LOCATION: 3402 Chimney Rock Road, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit to the TCEQ the required registration form for the Facility; PENALTY: $1,209; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Speedys Mart Incorporated dba Speedy Mart C-Stores, Formerly Known as National Mart Convenience Store; DOCKET NUMBER: 2003-0692-PST-E; TCEQ ID NUMBER: RN101735496; LOCATION: 6643 Cullen Boulevard, Houston, Harris County, Texas; TYPE OF FACILITY: retail service station; RULES VIOLATED: 30 TAC §334.8(c)(4)(B) and TWC, §26.3467(a), by failing to submit an accurate UST registration and self-certification form to the TCEQ; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate prior to delivery of a regulated substance into the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate the required financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of USTs; 30 TAC §334.50(b)(1)(A), (b)(2)(A)(i), and (d)(4)(A)(ii)(II); and TWC, §26.3475(a) and (c)(1), by failing to put the automatic tank gauge ("ATG") system into test mode at least once per month and by failing to equip the regular unleaded pressurized line on the UST system with a functioning automatic line leak detector; 30 TAC §334.51(b)(2)(C), and TWC, §26.3475(c)(2), by failing to have overfill prevention for the UST system; 30 TAC §334.48(c), by failing to conduct inventory control at the Facility; and 30 TAC §334.50(a)(1)(C)(ii), and TWC,

§26.3475(a), by failing to ensure that an automatic line leak detector was capable of detecting a release such that the probability of detection was at least ninety-five percent and the probability of false alarms was no greater than five percent; PENALTY: $20,000; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Syeda S. Azmad dba Quality One Cleaners; DOCKET NUMBER: 2006-1186-DCL-E; TCEQ ID NUMBER: RN103998506; LOCATION: 14366 Memorial Drive, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e), and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for the Facility; PENALTY: $1,185; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Thai Truong dba Love Drycleaners; DOCKET NUMBER: 2006-1352-DCL-E; TCEQ ID NUMBER: RN103962981; LOCATION: 12220 Jones Road, Suite A, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning facility; PENALTY: $1,185; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Youn Ok Kim dba Aunt Annies 5; DOCKET NUMBER: 2006-0967-PWS-E; TCEQ ID NUMBER: RN101196236; LOCATION: 16231 Farm-to-Market Road 3083, Conroe, Montgomery County, Texas; TYPE OF FACILITY: restaurant with a public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and THSC, §341.033(d), by failing to perform routine monthly bacteriological sampling of the public water supply and by failing to provide public notification of the failure to conduct monthly bacteriological sampling for the months of June 2005, July 2005, August 2005, October 2005, February 2006, and April 2006; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect all required repeat samples within 24 hours of being notified of a total coliform-positive result on a routine sample and by failing to provide public notice of the failure to collect all required repeat samples within 24 hours of notification of the total coliform-positive result in November 2005; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect at least five routine bacteriological samples following total coliform-positive results the preceding month and by failing to provide public notice of the failure to conduct proper bacteriological sampling in December 2005; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay all annual and all late Public Health Service fees for TCEQ Financial Administration Account No. 91700573 for Fiscal Years 2005 and 2006; PENALTY: $2,940; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200701865
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 15, 2007

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 25, 2007.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 25, 2007.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Brad Allen dba A+ Angus Ranch; DOCKET NUMBER: 2005-1357-AGR-E; TCEQ ID NUMBER: RN104316377; LOCATION: 6207 West Farm-to-Market 8, Stephenville, Erath County, Texas; TYPE OF FACILITY: animal feeding operation; RULES VIOLATED: 30 TAC §321.31(a) and Texas Water Code (TWC), §26.121(c); PENALTY: $1,050; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2006-0613-AIR-E; TCEQ ID NUMBER: RN100209451; LOCATION: 2100 Houston Avenue, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.201(b)(1)(G) and (H), and Texas Health and Safety Code (THSC), §382.085(b), by failing to identify that Nitrogen Oxides (NO_x) and Carbon Monoxide (CO) emissions had been generated; 30 TAC §101.20(1), and §116.715(a) and (c)(7); Air Permit No. 8404, Special Conditions (SC) 9, XII-4, XII-13; 40 Code of Federal Regulations (CFR) §60.104(a)(2)(i); and THSC, §382.085(b), by failing to maintain an emission rate below the authorized emission limit; 30 TAC §116.715(a) and (c)(7); 40 CFR §60.104(a)(2)(i); Air Permit No. 8404, SC 9; and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $18,944; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2005-2011-AIR-E; TCEQ ID NUMBER: RN100209451; LOCATION: 2100 Houston Avenue, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.201(b)(7) and (b)(8) and THSC, §382.085(b), by failing to

identify or report the amount of CO and NO2 emissions released; 30 TAC §116.715(a) and (c)(7); TCEQ Flexible Permit No. 8404, SC 9, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.715(a) and (c)(7); TCEQ Flexible Permit No. 8404, SC 9; and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§101.221(a), 116.715(a), (c)(7), and (9), and 116.721(a); TCEQ Flexible Permit No. 8404, SC 7A and 9, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.715(a) and (c)(7); TCEQ Flexible Permit No. 8404, SC 9; and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $32,980; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Rafael Ramon dba Lil Bitty Trucking; DOCKET NUMBER: 2006-0342-WQ-E; TCEQ ID NUMBER: RN104745609; LOCATION: 830 South Getty Street, Uvalde, Uvalde County, Texas; TYPE OF FACILITY: trucking company; RULES VIOLATED: 30 TAC §327.5(a), and TWC, §26.121(a), by failing to prevent the discharge of diesel fuel into or adjacent to any waters in the state and to immediately abate, contain and cleanup the discharge; 30 TAC §327.3(b), and TWC, §26.039(b), by failing to provide notification to TCEQ of a reportable discharge or spill within 24 hours after the occurrence; PENALTY: $3,750; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Sharnah Corporation dba Sadlers Food Mart; DOCKET NUMBER: 2006-0621-PST-E; TCEQ ID NUMBER: RN101543015; LOCATION: 1538 East Interstate 30, Garland, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.50(b)(2), and TWC, §26.3475(a), by failing to conduct proper release detection for the product piping associated with the UST system; 30 TAC §334.50(b)(2)(A)(i)(III), and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.10(b), by failing to have the required UST records maintained and readily accessible and available for inspection upon request by commission personnel; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records on-site at the Station ordinarily manned during business hours, and make immediately available for review upon request; 30 TAC §115.248(1), and THSC, §382.085(b), by failing to ensure that at least one Station representative received training in the operation and maintenance of Stage II vapor recovery system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.242(3)(A), and THSC, §382.085(b), by failing to maintain Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order(s), and free of defects that would impair the effectiveness of the system, including, but not limited to absence or disconnection of any component that is a part of the approved system; PENALTY: $16,000; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Speedy Stop Food Stores, Ltd. dba Speedy Stop #92; DOCKET NUMBER: 2005-1925-MLM-E; TCEQ ID NUMBER: RN104711569; LOCATION: 8.1 acre tract of land located within the Edwards Aquifer recharge zone, east of the intersection of IH-35 and SH-195, Georgetown, Williamson County, Texas; TYPE OF FACILITY: acre tract of land; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing construction on property located within the Edwards Aquifer Recharge Zone, as documented during an investigation conducted at the Site by an Austin Central office investigator on June 10, 2005; 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to submit Notice of Intent (NOI) to obtain authorization to discharge storm water associated with commercial development to water in the state through a Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit, as documented during an investigation conducted at the Site; PENALTY: $29,625; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(7) COMPANY: The City of Carl's Corner; DOCKET NUMBER: 2003-1372-MLM-E; TCEQ ID NUMBER: RN101391852; LOCATION: 2100 Linda Road East in Carl's Corner, Hill County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the far reaches of the distribution system at a minimum concentration of 0.2 milligrams per liter ("mg/L") free chlorine; 30 TAC §290.43(d)(3), by failing to provide a device to readily determine air-water-volume for pressure tanks greater than 1,000 gallon capacity; 30 TAC §290.42(i), by failing to ensure that all chemicals used in the treatment of water supplied by the Facility conformed to American National Standards Institute/National Sanitation Foundation ("ANSI/NSF") Standard 60 for direct additives; 30 TAC §290.44(d)(5), by failing to provide the regulated entity with sufficient values and blow-offs so that necessary repairs could be made without undue interruption of service and for flushing the lines when repaired; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that extends a minimum of 18 inches above the natural ground surface; 30 TAC §290.109(c)(1)(B), by failing to collect water samples for bacteriological analysis from all the locations specified in the Facility's Site Sample Plan; 30 TAC §290.46(f)(2), by failing to make the water system's operating records available at the time of the investigations; 30 TAC §290.46(t), by failing to post in plain view a legible ownership sign that provides the name and an emergency telephone number for the Facility; 30 TAC §290.46(m)(4), by failing to maintain all water storage facilities in a watertight condition; 30 TAC §290.46(h), by failing to keep a supply of calcium hypochlorite on hand to use as a disinfectant for making repairs to the drinking water system; 30 TAC §290.41(c)(3)(K), by failing to properly screen the well casing vent with a 16-mesh or finer corrosion resistant screening material; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling tap on the well discharge to facilitate the collection of samples from the well for chemical and bacteriological analysis; 30 TAC §290.46(n)(2), by failing to prepare and maintain a map of the Facility's distribution system so that valves and mains can be easily

located during emergencies, which was not available at the time of the investigations; 30 TAC §290.45(b)(1)(B)(iii), by failing to provide two service pumps having a total capacity of 2.0 gallons per minute ("gpm") per connection; 30 TAC §288.20(a) and §288.30(3), by failing to provide a copy of an adopted drought contingency plan for inspection upon request of the TCEQ investigator; 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum water pressure of 35 pounds per square inch ("psi") within the water distribution; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions; 30 TAC§290.43(c)(1), by failing to provide the ground storage tank with a roof vent screen that will prevent entry of animals, birds, insects and heavy air contaminants; 30 TAC§290.41(c)(3)(O), by failing to provide the well site with an intruder-resistant fence; 30 TAC§290.110(c)(5)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; and 30 TAC §290.45(b)(1)(C)(i) by failing to provide a total well capacity of 0.6 gpm per connection; 30 TAC §290.45(b)(1)(C)(iii) by failing to provide two service pumps having a total capacity of 2.0 gpm per connection; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a) by failing to employ an operator with a Class "D" or higher license as documented during an inspection conducted on November 4, 2005; PENALTY: $13,263; Supplemental Environmental Project (SEP) offset amount of $13,263 applied to Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D") Abandoned Tire Clean-Up; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: The Premcor Refining Group Inc; DOCKET NUMBER: 2006-0738-AIR-E; TCEQ ID NUMBER: RN102584026; LOCATION: 1801 Gulfway Drive, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.20(3) and §116.715(a) and (c)(7); and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emissions event that occurred on October 28, 2005, in violation of New Source Review ("NSR") Flexible Air Permit No. 6825A/PSD-TX-49, Special Condition No. 5A, and by failing to meet the criteria for an affirmative defense under 30 TAC §101.22; 30 TAC §101.20(3) and §116.715(a) and (c)(7); and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emissions event that occurred on May 1, 2006, in violation of NSR Flexible Air Permit No. 6825A/PSD-TX-49, Special Condition No. 5A, and by failing to meet the criteria for an affirmative defense under 30 TAC §101.222; 30 TAC §101.20(3) and §116.715(a); and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event that occurred on October 24, 2005, in violation of NSR Flexible Air Permit No. 6825A/PSD-TX-49, Special Condition No. 5, and by failing to meet the criteria for an affirmative defense under 30 TAC §101.222; 30 TAC §101.20(2) and (3) and §116.715(a) and (c)(7); 40 CFR §60.104(a)(1); and THSC, §382.085(b), by failing to comply with permitted emissions limits and burned fuel gas exceeding a maximum allowable 160 parts per million ("ppm") sulfur content during an emissions event that occurred on November 19, 2005 and November 20, 2005, in violation of NSR Flexible Air Permit No. 6825A/PSD-TX-49, Special Condition Nos. 5A and 1A, and by failing to meet the criteria for an affirmative defense under 30 TAC §101.222; 30 TAC §101.201(a)(1)(A) and (B) and THSC, §382.085(b), by failing to timely report an emission event; PENALTY: $43,437; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200701864

Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 15, 2007

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Notice of Request for Public Comment and Notice of a Public Meeting for One Total Maximum Daily Load

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment one draft total maximum daily load (TMDL) for bacteria in Oso Bay (Segment 2485) of the Nueces-Rio Grande Coastal Basin, located in Nueces County. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the state of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for bacteria in Oso Bay (Segment 2485). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comment on each of the six major components of the TMDL: problem definition, endpoint identification, source analysis, linkage between sources and receiving waters, margin of safety, and pollutant loading allocation. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site referenced below. The TMDL will then be submitted to EPA Region 6 for approval. Upon approval, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on June 5, 2007, at 7:00 p.m., at the Texas A&M University-Corpus Christi, Harte Research Institute, 6300 Ocean Drive, Corpus Christi, Texas, 78412. At this meeting individuals have the opportunity to present oral statements when called upon in order of registration. There will be no agenda or presentations given, open discussion will not occur during the meeting. However, an agency staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after all public comments have been received.

Written comments should be submitted to Larry Koenig, Texas Commission on Environmental Quality, Water Programs Division, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., June 15, 2007, and should reference *One Total Maximum Daily Load for Bacteria in Oso Bay, For Segment Number 2485*. For further information regarding the draft TMDL, please contact Larry Koenig, Water Programs Division, at (512) 239-4533 or *lkoenig@tceq.state.tx.us.* Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: *http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html* or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200701873

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 15, 2007

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Notice of Water Rights Applications

Notices issued May 9 through May 15, 2007.

APPLICATION NO. 18-2022A; Kendall Water Ltd., a Texas Limited Partnership, d/b/a Kendall Water Supply, P.O. Box 2295, Boerne, Texas 78006, applicant, has applied for an amendment to Certificate of Adjudication No. 18-2022 to add an additional diversion point on the Guadalupe River, Guadalupe River Basin as authorized in Certificate of Adjudication No. 18-2042A, and an additional place of use in Kendall County. Kendall Water Ltd., further requests to impound 15 acre-feet of water in the five off-channel reservoirs authorized by Certificate of Adjudication No. 18-2042A for subsequent diversion and use. The application was received on November 29, 2006. Additional information for the application was received on March 5, March 13, and March 22, 2007. The application was declared administratively complete and accepted for filing with Office of the Chief Clerk on March 26, 2007. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by May 29, 2007.

APPLICATION NO. 18-2450B; Kendall Water Ltd., a Texas Limited Partnership, d/b/a Kendall Water Supply, P.O. Box 2295, Boerne, Texas 78006, Applicant, has applied for an amendment to Certificate of Adjudication No. 18-2450 to add an additional diversion point on the Guadalupe River, Guadalupe River Basin as authorized in Certificate of Adjudication No. 18-2042A, add an additional place of use in Kendall County, and impound 78 acre-feet of water in the five currently authorized off-channel reservoirs in Certificate of Adjudication No. 18-2042A for subsequent diversion and use. The application was received on November 29, 2006. Additional information for the application was received on March 5, March 13, and March 22, 2007. The application was declared administratively complete and accepted for filing with Office of the Chief Clerk on March 26, 2007. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by May 30, 2007.

APPLICATION NO. 12110; The City of Dallas, Applicant, 1500 Marilla Street, Room 4AN, Dallas, TX 75201, has applied for a Temporary Water Use Permit to divert and use not to exceed 49,500 acre-feet of water per year for a period of three years from Lake Ray Hubbard on the East Fork Trinity River, Trinity River Basin for municipal purposes in Dallas, Kaufman, Rockwall, and Collin Counties. The application was received on October 3, 2006. Additional information and fees were received on February 2, and February 16, 2007. The application was declared administratively complete and accepted for filing on March 14, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by May 31, 2007.

APPLICATION NO. 14-1881B; Connie Bagley Adams, 1890 CR 204, San Saba, Texas, 76877, applicant, has applied for an amendment to a portion of Certificate of Adjudication No. 14-1881 to increase the authorized diversion at an existing downstream diversion point from 21 acre-feet to 37.30 acre-feet, and to add a place of use for the increased amount in San Saba County. No increase in the maximum combined diversion rate or amount is requested. The application was received on January 22, 2007. Additional information was received on February 28, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 5, 2007. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by June 4, 2007.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to TCEQ, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us

Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200701908
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 16, 2007

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Texas Commission on Fire Protection

Correction of Error

The Texas Commission on Fire Protection published notice of intention to review some of the Commission's chapters in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2483). The submission contained incorrect names for the following chapters.

Chapter 433 was published as "Driver/Operator-Pumper." It should read "Minimum Standards for Driver/Operator-Pumper."

Chapter 443 was published as "Certification for Curriculum Manual." It should read "Certification Curriculum Manual."

Chapter 461 was published as "Committee Members." It should read "General Administration."

Chapter 463 was published as "Application Process." It should read "Application Criteria."

Chapter 465 was published as "Equipment Standards." It should read "Equipment, Facilities, and Training Standards."

TRD-200701921

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Reimbursement Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will hold a public hearing on June 11, 2007, at 10:30 a.m., to receive public comment on the proposed Medicaid reimbursement rate applicable to providers of Medically Dependent Children Program (MDCP) Camp Services. The Texas Department of Aging and Disability Services (DADS) operates this program. The public hearing will be held in the Permian Basin Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The public hearing will be held in compliance with Human Resources Code, §32.0282 and Texas Administrative Code (TAC), Title 1, §355.105(g), which require public notice and hearings on proposed reimbursement rates. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Ms. Kimbra Rawlings by telephone at (512) 491-1174 by June 4, 2007, so that appropriate arrangements can be made.

Proposal. The proposed rate will be effective on June 1, 2007, if approved, and will result in an increased rate for MDCP Camp Services. The proposal will increase the rate from $4.87 per hour to $7.14 per hour.

Methodology and justification. The proposed rate was determined in accordance with the rate setting methodology codified as Texas Administrative Code, Title 1, Chapter 355, Subchapter E, §355.507, Reimbursement Methodology for the Medically Dependent Children Program. This change is being made to accommodate the increased cost of camp services for MDCP clients.

Briefing package. A briefing package describing the proposed reimbursement rate will be available, upon request, no later than May 25, 2007. Interested parties may request a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by facsimile at (512) 491-1998; or by e-mail at kimbra.rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written comments. Written comments regarding the proposed reimbursement rate may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be hand-delivered or sent by U.S. mail or overnight express to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Rawlings at (512) 491-1998 or by e-mail at kimbra.rawlings@hhsc.state.tx.us.

TRD-200701882
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 15, 2007

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Notice of Hearing on Proposed Provider Reimbursement Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will hold a public hearing on June 11, 2007, at 9:00 a.m. to receive public comment on proposed Medicaid reimbursement rates applicable to providers of Home and Community-based Services (HCS), to the Texas Home Living (TxHmL) Program, and to the Community Living Assistance and Support Services (CLASS) Program. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. The public hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed reimbursement rates. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Ms. Kimbra Rawlings by telephone at (512) 491-1174 by June 4, 2007, so that appropriate arrangements can be made.

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter E, §355.505, Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; Subchapter F, §355.723, Reimbursement Methodology for Home and Community-Based Services (HCS); and Subchapter F, §355.791, Reimbursement Methodology for the TxHmL Program. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). This change is being made to accommodate anticipated increased appropriations by the Legislature for these programs.

Briefing package. A briefing package describing the proposed reimbursement rates will be available, upon request, no later than May 25, 2007. Interested persons may request a copy of the briefing package by contacting Kimbra Rawlings by telephone at (512) 491-1174; by facsimile at (512) 491-1998; or by e-mail at kimbra.rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written comments. Written comments regarding the proposed reimbursement rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be hand-delivered or sent by U.S. mail or overnight express to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Rawlings's attention at (512) 491-1998 or by e-mail at kimbra.rawlings@hhsc.state.tx.us.

TRD-200701898
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 16, 2007

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Notice of Hearing on Proposed Provider Reimbursement Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will hold a public hearing on June 11, 2007, at 9:00 a.m. to receive public comment on proposed Medicaid reimbursement rates applicable to non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin,

Texas. The public hearing will be held in compliance with Human Resources Code, §32.0282 and Texas Administrative Code (TAC), Title 1, §355.105(g), which require public notice and hearings on proposed reimbursement rates. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Ms. Kimbra Rawlings by telephone at (512) 491-1174 by June 4, 2007, so that appropriate arrangements can be made.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes the following daily reimbursement rates for non-state operated ICF/MR effective June 1, 2007.

Level of Need	8 or Less Beds	9 - 13 Beds	14+ Beds
1 Intermittent	$143.38	$120.37	$93.51
5 Limited	$159.88	$132.49	$105.77
8 Extensive	$182.67	$154.47	$118.45
6 Pervasive	$224.05	$187.18	$164.78
9 Pervasive +	$394.45	$369.85	$365.07

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified as Texas Administrative Code (TAC), Title 1, Chapter 355, Subchapter D, §355.456(d), (relating to the Rate Setting Methodology for non-state operated ICF/MR). These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). This change is being made to accommodate anticipated increased appropriations by the Legislature for these facilities.

Briefing package. A briefing package describing the proposed reimbursement rates will be available, upon request, no later than May 25, 2007. Interested persons may request a copy of the briefing package by contacting Kimbra Rawlings by telephone at (512) 491-1174; by facsimile at (512) 491-1998; or by e-mail at kimbra.rawlings@hhsc.state.tx.us.

Written comments. Written comments regarding the proposed reimbursement rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be hand-delivered or sent by U.S. mail or overnight express to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Rawlings's attention at (512) 491-1998 or by e-mail at kimbra.rawlings@hhsc.state.tx.us.

TRD-200701906

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 16, 2007

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on June 7, 2007, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for the radiology procedure codes listed below. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rates, which will be effective August 13, 2007, are as follows:

*Type of Service Code (TOS)	Procedure Code	Current Medicaid Rate	Proposed Medicaid Rate
4	75998	$0.00	$69.01
I	75998	$0.00	$14.73
T	75998	$0.00	$54.28
4	76937	$0.00	$27.55
I	76937	$0.00	$11.46
T	76937	$0.00	$16.09

*Type of Service Code Key: 4 = radiology (total component); I = professional component for radiology, laboratory, or radiation therapy; T = technical component for radiology, laboratory, or radiation therapy.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8081, which addresses the reimbursement methodology for radiological providers, 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, and the specific fee guidelines published in Section 2.2.1.2 of the 2007 Texas Medicaid Provider Procedures Manual. 1 TAC §355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after May 23, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

***Required Notice:** The five character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2006 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in this notice. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of this notice should refer to the most recent Current Procedural Terminology, which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DFARS apply. CPT is a registered trademark of the American Medical Association.*

TRD-200701881
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 15, 2007

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment Number 764, Transmittal Number 07-005, to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. This amendment will revise the Reimbursement Methodology for Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). The proposed amendment will be effective June 1, 2007.

The proposed amendment will repeal rate reductions that were effective September 1, 2003, and will further increase ICF/MR rates through August 31, 2009. The Reimbursement Methodology will be modified to indicate that, for the period beginning June 1, 2007 and ending August 31, 2009, the ICF/MR payment rates will be equal to the payment rates in effect May 31, 2007 plus 4.77 percent. HHSC is taking this action based on anticipated increased state appropriations that will allow for rate adjustments for the ICF/MR program.

If approved, the amendment is expected to result in annual aggregate increased costs of approximately $17,883,500 for Federal Fiscal Year 2008, of which approximately $10,828,459 is federal funds and $7,055,041 is state general revenue. For Federal Fiscal Year 2009, estimated increased costs are approximately $17,883,500, of which approximately $10,737,253 is federal funds and $7,146,247 is state general revenue.

To obtain additional information or copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200 or by telephone at (512) 491-1373. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200701896
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 16, 2007

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Public Notice Correction - CBA Waiver Renewal

The Texas Health and Human Services Commission (HHSC) published a public notice regarding the renewal of the Community Based Alternatives (CBA) waiver in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2399). The notice incorrectly stated that HHSC was soliciting public comment for a 30-day period on the submission of the State's application for a renewal of the CBA waiver. The correct notice should read as follows:

The Texas Health and Human Services Commission (HHSC) announces its intent to submit the State's application for a renewal of the Community Based Alternatives (CBA) waiver, which is a Medicaid Home and Community-Based Service waiver under the authority of §1915(c) of the Social Security Act. The current waiver is scheduled to expire August 31, 2007.

The CBA waiver program allows elderly persons (age 65 and older) and persons over the age of 21 with a disability, who are eligible for nursing facility level of care, to receive services in the community rather than in an institutional facility. The CBA waiver program provides personal care, nursing services, adaptive aids, medical supplies, minor home modifications, and other supports to allow individuals to remain in the community.

CBA waiver services are available in all counties in the State with the exception of counties covered by the STAR+PLUS program (Bexar, Harris, Nueces and Travis service areas). HHSC currently has a waiver pending approval, which would impact CBA services in the Dallas and Tarrant service areas.

The proposed renewal of the waiver is expected to result in cost savings for the State. The specific, estimated cost savings amount will not be known until funding is determined by the 80th Legislature, Regular Session, 2007. The current waiver resulted in a cost savings of approximately ($2,073.49) per participant for the period of September 1, 2004, through August 31, 2005, and approximately ($6,479.48) per participant for the period of September 1, 2005, through August 31,

2006. These figures demonstrate that the current waiver meets the requirements in section 1915(c)(2)(D) of the Social Security Act.

HHSC is requesting that the waiver renewal be approved for a five-year period beginning September 1, 2007. This waiver renewal maintains cost neutrality for each year in the five-year renewal period covering 2007 through 2012.

To obtain copies of the proposed waiver renewal, interested parties may contact Carmen Capetillo by mail at Health and Human Services Commission, P.O. Box 85200, H-620, Austin, Texas 78708-5200; by telephone at (512) 491-1128; by facsimile at (512) 491-1953; or by e-mail at carmen.capetillo@hhsc.state.tx.us.

TRD-200701917

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: May 16, 2007

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Public Notice Correction - MDCP Waiver Renewal

The Texas Health and Human Services Commission (HHSC) published a public notice regarding the renewal of the Medically Dependent Children Program (MDCP) waiver in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2399). The notice incorrectly stated that HHSC was soliciting public comment for a 30-day period on the submission of the State's application for a renewal of the MDCP waiver. The correct notice should read as follows:

The Texas Health and Human Services Commission (HHSC) announces its intent to submit the State's application for a renewal of the Medically Dependent Children Program waiver, which is a Medicaid Home and Community-Based Service waiver under the authority of §1915(c) of the Social Security Act. The current waiver is scheduled to expire August 31, 2007.

The MDCP waiver program provides a variety of services to medically fragile children under 21 years of age who are living in the community and would otherwise require care in a nursing facility. Services include respite care, adaptive aids, minor home modifications, and a selection of other disability-related services that help these children remain in the community.

The proposed renewal of the waiver is expected to result in cost savings for the State. The specific, estimated cost savings amount will not be known until funding is determined by the 80th Legislature, Regular Session, 2007. The current waiver resulted in a cost savings of approximately ($34,948.49) per participant for the period of September 1, 2004, through August 31, 2005, and approximately ($85,056.56) per participant for the period of September 1, 2005, through August 31, 2006. These figures demonstrate that the current waiver meets the requirements in section 1915(c)(2)(D) of the Social Security Act.

HHSC is requesting that the waiver renewal be approved for a five-year period beginning September 1, 2007. This waiver renewal maintains cost neutrality for each year in the five-year renewal period covering 2007 through 2012.

To obtain copies of the proposed waiver renewal, interested parties may contact Carmen Capetillo by mail at Health and Human Services Commission, P.O. Box 85200, H-620, Austin, Texas 78708-5200; by telephone at (512) 491-1128; by facsimile at (512) 491-1953; or by e-mail at carmen.capetillo@hhsc.state.tx.us.

TRD-200701918

Wendy Pellow

Assistant General Counsel

Texas Health and Human Services Commission

Filed: May 16, 2007

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Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program Notice of Funding Availability (NOFA)

PY 2007 Homebuyer Assistance Program Directed to Assist Person with Disabilities

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately $2,000,000 of the 2007 HOME Investment Partnerships Program (HOME) to fund housing programs for persons with disabilities. Funds will be made available to increase home ownership for persons with disabilities through Homebuyer Assistance activities. The availability and use of these funds is subject to the State HOME Rules (10 TAC Chapter 53) and the Federal HOME regulations governing the HOME Program (24 CFR Part 92).

ALLOCATION OF PY 2007 FUNDS

Section 2306.111(d), Texas Government Code, requires the Department to allocate housing funds awarded in the HOME Program to each Uniform State Service Region utilizing the Regional Allocation Formula, developed by the Department. The use of the Regional Allocation Formula is statutory and must be adhered to by the Department.

Section 2306.111(c), Texas Government Code, requires the Department to allocate no less than 95 percent of the HOME Program Funds to applicants which serve households located in a non-participating jurisdiction (non-PJ). Five percent (5%) of the total HOME 2007 allocation, up to $2 million dollars across all HOME eligible activities, may be expended in a participating jurisdiction (PJ), only if it provides assistance to persons with disabilities. Under this NOFA, approximately $1 million dollars will be targeted to assist households in a Participating Jurisdiction (PJ), however, this may be adjusted at the discretion of the Department not to exceed the $2 million cap. Applications will be accepted by the Department until **Friday, June 15, 2007** under a competitive method utilizing the Regional Allocation Formula. If the maximum amount of HOME funds allowed in a PJ are awarded during the competitive cycle, no further HOME funds will be awarded in a PJ. Applicants desiring to serve all or part of their targeted households within the boundaries of a participating jurisdiction must designate the number of households to be served in PJs.

ELIGIBLE APPLICANTS

* Units of General Local Government

* Nonprofit Organizations

* Public Housing Authorities (PHAs)

ALLOCATION AND RECOMMENDATION PROCESS

All applications for funds received are reviewed for threshold requirements regarding application documentation and compliance with Department requirements. All applications are subject to the Regional Allocation Formula and are evaluated competitively.

Pursuant to the Regional Allocation Formula, the table below shows the targeted allocation of HOME funds to each Uniform State Service Region and the corresponding rural and urban/ex-urban distribution within each region for each HOME activity. Applicants are strongly

encouraged to apply based on their program's needs and capabilities for administration even if that amount exceeds the targeted formula in their region and sub-region (urban/exurban or rural component of a region).

The process to be used for competitive submissions follows:

* The Department identifies the region and sub-region based on the location of where the homeowner will reside, not the location of where the homeowner originally was living or the location of the applicant.

* First, applications will be reviewed for threshold eligibility then scored and ranked from highest to lowest scores in their respective region. Funding recommendations to the Board will be made beginning with the highest scoring eligible application in each sub-region and will continue to be recommended down the eligible application list by score in that sub-region until all targeted funds for that sub-region have been committed.

* Second, if no eligible applications are received in a sub-region, the targeted funds for that sub-region will be merged with the other targeted funds for that region.

* Third, if no eligible applications are received in a region, the targeted fund for that region will be merged with all other similarly undersubscribed funds from other regions and utilized to fund additional eligible applications in regions that have more eligible applications than funds available.

* If the high-scoring or only eligible applications for a sub-region or region exceed the amount of funds targeted for that sub-region or region, they may still be funded in the amount requested to the extent funds are available from regions with unutilized targeted funds.

* To the extent that the total amount of funds requested competitively by eligible applications does not exceed the $2 million available for this NOFA, all eligible applications may be recommended to the Board for award regardless of region or sub-region unless they exceed the limit in PJs.

Table 1. Regional, Rural, and Urban/ Exurban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban/ Exurban Funding Amount	Urban/ Exurban Funding %
1	Lubbock	$121,003	6.1%	$120,981	100.0%	$21	0.0%
2	Abilene	$90,332	4.5%	$88,219	97.7%	$2,113	2.3%
3	Dallas/Fort Worth	$355,466	17.8%	$97,964	27.6%	$257,502	72.4%
4	Tyler	$242,969	12.1%	$214,093	88.1%	$28,876	11.9%
5	Beaumont	$120,487	6.0%	$102,250	84.9%	$18,237	15.1%
6	Houston	$137,997	6.9%	$62,148	45.0%	$75,849	55.0%
7	Austin/Round Rock	$82,675	4.1%	$45,086	54.5%	$37,590	45.5%
8	Waco	$67,156	3.4%	$41,418	61.7%	$25,737	38.3%
9	San Antonio	$112,066	5.6%	$86,994	77.6%	$25,072	22.4%
10	Corpus Christi	$146,520	7.3%	$119,562	81.6%	$26,958	18.4%
11	Brownsville/Harlingen	$360,519	18.0%	$237,297	65.8%	$123,222	34.2%
12	San Angelo	$108,020	5.4%	$40,703	37.7%	$67,317	62.3%
13	El Paso	$54,790	2.7%	$35,202	64.2%	$19,588	35.8%
	Total	$2,000,000	100.0%	$1,291,917	64.6%	$708,083	35.4%

It should be noted by applicants that Urban/Exurban areas are not exclusively limited to Participating Jurisdictions. It may be possible to serve households in non-Participating Jurisdictions within an Urban/Exurban area. Households identified in an Application to be committed in non-Participating Jurisdictions within an Urban/Exurban area do not count against the $1 million cap for this NOFA in PJs.

DESCRIPTION OF ACTIVITIES

Homebuyer Assistance (HBA)

Down payment and closing cost assistance is provided to first time homebuyers for the acquisition, or acquisition and rehabilitation, of affordable and accessible single family housing. Rehabilitation must be to ensure accessibility. Each eligible household shall consist of at least one individual who meets the eligibility standards as defined by the Americans with Disabilities Act and/or the definition utilized by the Promoting Independence Advisory Committee which provides that Persons with Disabilities is defined as: (1) A person is considered to have a disability if the person has a physical, mental, or emotional impairment that (i) is expected to be of long-continued and indefinite duration; (ii) substantially impedes his or her ability to live independently; and (iii) is of such a nature that such ability could be improved by more suitable housing conditions. (2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that (i) is attributable to a mental or physical impairment or combination of mental and physical impairments; (ii) is manifested before the person attains age twenty-two; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency, and (v) reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services that are lifelong or extended duration and are individually planned and coordinated.

Eligible first time homebuyers may receive loans up to $35,000 for down payment, closing costs and rehabilitation. A maximum of

$15,000 of the $35,000 loan can be used for down payment and closing cost. The balance of the loan can be used for required accessible modifications. All homes purchased with HOME assistance must meet all applicable codes and standards, including the Texas Minimum Construction Standards (TMCS).

HBA assistance will be in the form of a 0% interest 10 year deferred forgivable loan creating a 2nd or 3rd lien. The loan is to be repaid at the time of resale of the property, refinance of the first lien, repayment of the first lien, or if the unit ceases to be the assisted homebuyer's principal residence, if any of these occurs before the end of the 10 year term. The affordability term for the home is 10 years. The amount of recapture will be based on the pro-rata share of the remaining loan term. The rehabilitation portion of the homebuyer assistance, if utilized, will be a deferred forgivable loan if the assisted household's income is less than fifty percent (50%) of the Area Median Family Income (AMFI), as defined by HUD. For assisted households whose income is between 50 and 80% of the AMFI, the rehabilitation assistance will be a zero percent interest 30-year repayable loan.

At the completion of the assistance, all properties must meet all applicable codes, rehabilitation standards, ordinances and zoning ordinances. If a home is newly constructed it must also meet federal energy requirements.

MAXIMUM AWARD AMOUNT AND CONTRACT TERM

The maximum award amount per activity per region is $275,000. Up to $500,000 may be awarded to applicants whose service includes multiple counties within a Uniform State Service Region. Applicants may apply in multiple state service regions. Up to six percent (6%) of the project request may be requested for administrative costs. In accordance with the State of Texas Low Income Housing Plan (SLIHP) no match will be required. In accordance with 10 TAC §53.54(1)(b), the contract term shall not exceed 24 months.

REVIEW OF APPLICATIONS

HOME project funds will be awarded competitively per State of Texas HOME Program Rules, 10 TAC §§53.50 - 53.63 for applications received prior to June 15, 2007. General Selection Criteria is listed in the State of Texas HOME Program Rules, 10 TAC §§53.50 - 53.63, and forms the basis for the State's development of scoring criteria for this Activity. Certain sections of the scoring criteria have been waived by the TDHCA Board of Directors, and have been revised in order to reflect specific Housing Program for Persons with Disabilities application requirements.

THRESHOLD AND SELECTION CRITERIA

Because this program is a reimbursement program, every applicant must be able to evidence as a threshold standard that they demonstrate the ability to administer the program and commit cash reserves of at least $70,000.

It will also be a threshold requirement that every HBA application provide evidence of homebuyer counseling. Evidence must include documentation describing the level of homebuyer counseling proposed for potential homebuyers including a copy of the curriculum, a copy of a written agreement with service provider, and a description of post purchase counseling to be provided.

In accordance with 10 TAC §53.61, Selection Criteria, applications must meet the minimum threshold score in order to be considered eligible to be recommended for funding. In the event of a tie between two or more applicants, the Department reserves the right to determine which application will be recommended for funding. Tied applications may receive a partial recommendation for funding.

The maximum score is 100 points and the mandatory threshold score is 70 points. The following selection criteria point breakdown will be utilized when scoring applications:

(1) Affordable Housing Needs Score. Points range from 0 to 7, as published by the Department. Applications for areas exclusively serving persons in PJs will receive a score of zero. Applications for areas serving persons in PJs and non-PJs will receive a weighted score based on the number of households in the PJ and non-PJ areas. Maximum 7 points.

(2) Income Targeting. Points will be awarded based on the percentage of total units targeted to specific income levels. Counties whose median income is at or below the statewide median income will receive the same number of points for income targeting when serving households at or below 50% AMFI as those counties exceeding the statewide median income targeting households at or below 30% AMFI. Maximum 20 points.

(A) 0% to 19.99% of units at 80% AMFI, 5 points;

(B) 20% to 39.99% of units at 80% AMFI, 4 points;

(C) 40% to 59.99% of units at 80% AMFI, 3 points;

(D) 60% to 79.99% of units at 80% AMFI, 2 points;

(E) 80% to 100% of units at 80% AMFI, 1 point;

(F) 0% to 9.99% of units at 60% AMFI, an additional 2 points;

(G) 10% to 19.99% of units at 60% AMFI, an additional 4 points;

(H) 20% to 29.99% of units at 60% AMFI, an additional 6 points;

(I) 30% to 39.99% of units at 60% AMFI, an additional 8 points;

(J) 40% to 49.99% of units at 60% AMFI, an additional 10 points;

(K) 50% to 59.99% of units at 60% AMFI, an additional 11 points;

(L) 60% to 69.99% of units at 60% AMFI, an additional 12 points;

(M) 70% to 79.99% of units at 60% AMFI, an additional 13 points;

(N) 80% to 89.99% of units at 60% AMFI, an additional 14 points;

(O) 90% to 100% of units at 60% AMFI, an additional 15 points.

(3) Previous Award and Past Performance. Applicants will receive points for having received an award and performed in accordance with their contracts and Department rules. If unsatisfactory performance exists on any prior award regardless of set aside or activity, a score of zero points will result. Unsatisfactory past performance on any contract will be forgiven if 2 years from the application deadline date has elapsed. Maximum 20 points.

(A) Applicant has received a HOME award prior to 2002 and is 100% committed, drawn, and programmatically closed based on the number of units contractually obligated, by application deadline date, 20 points; or

(B) Applicant received a HOME award in 2002-2003 and funds are 100% committed and drawn, based on number of units contractually obligated, by application deadline date, 17 points; or

(C) Applicant received a HOME award in 2004 and funds are 75% committed and 50% drawn by application deadline date, 14 points; or

(D) Applicant received a HOME award during 2005 and a Contract Environmental Clearance completed by application deadline date, 11 points; or

(E) Applicant has never received a HOME award, 8 points.

(4) Leveraging. Points will be awarded based on the dollar amount of eligible leverage in the form of funds and/or the value of leveraged services (office space, salaries, etc) as a percentage up to 25% of the requested project funds Maximum 10 points. Percentage of leverage per Project Request:

(A) 0% to 12.49% of project request, 0 points;

(B) 12.5% to 15.5% of project request, 6 points;

(C) 15.51 to 18.5% of project request, 7 points;

(D) 18.51% to 21.5% of project request, 8 points;

(E) 21.51% to 24.99% of project request, 9 points;

(F) 25% or greater of project request, 10 points.

(5) Homebuyer Assistance. Description of Lender Products. Points will be awarded based on a review of the commitment letters (up to three letters) submitted from lenders interested in participating in the applicant's proposed application. To be considered for scoring, the letters must be on the lender's letterhead, including: name of lender; address, city, state, and zip code; and state the willingness and ability to make affordable loan products available for first-time homebuyers. Letters must be signed and dated within three months of application deadline. 2 points per letter for a maximum of 6 points.

(6) Citizen Forms. Used as an indicator of demand, points will be awarded based on the number of completed citizen forms as a percentage of the total units proposed. Maximum of 10 points.

(A) 0% to 9.99% of forms complete, 0 points;

(B) 10% to 29.99% of forms complete, 2 points;

(C) 30% to 49.99% of forms complete, 4 points;

(D) 50% to 69.99% of forms complete, 6 points;

(E) 70% to 89.99% of forms complete, 8 points;

(F) 90% to 100% of forms complete, 10 points.

(7) Financial Oversight. Submission of 2005 or 2006 "Independent Auditor's Report", 2 points.

(8) Experience Providing Services to Persons with Disabilities. Maximum 10 points.

A total of 10 points will be awarded to organizations that have five (5) or more years providing services specifically targeting the needs of persons with disabilities as evidenced by previous contracts with funding entities for these services. To satisfy this requirement and obtain points for this category, applicant may provide evidence of a partnership with an entity or organization that meets this requirement.

(9) Experience Providing Homebuyer Assistance Service. Maximum 5 points. A total of 5 points will be awarded for organizations that have at least two (2) years experience providing homebuyer assistance services as evidenced by current or previous contracts with funding entities for these services. To satisfy this requirement and obtain points for this category, applicant may provide evidence of a partnership with an entity or organization that meets this requirement.

(10) Plan for Identifying Accessibility Needs of the Homeowner. Maximum 10 points. A total of 10 points will be awarded. Applicant must submit a plan that must clearly describe the process and expertise to be used in determining the accessibility needs of the homebuyer. The process should include resumes of qualified/experienced staff or agreement with a qualified/experienced external company or agency.

APPLICATION PROCEDURES, FINAL FILING

The HOME Application Guide for this NOFA is available on the Department's website at www.tdhca.state.tx.us or you may call (512) 475-1391 to request a copy. Applications must be submitted on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

Applications mailed via the U.S. Postal Service must be mailed to:

Texas Department of Housing & Community Affairs

HOME Division

P.O. Box 13941

Austin, Texas 78711-3941

Applications mailed by private carrier or hand-delivered will be received at the physical address of:

Texas Department of Housing & Community Affairs

HOME Division

221 E. 11th Street

Austin, Texas 78701

Applicants are required to remit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per application. Please send check, cashier's check, or money order; do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive grant application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status in lieu of the application fee. The application fee is not an eligible or reimbursable cost under the HOME Program.

Applications that do not meet the filing deadline and application fee requirements will be returned to the applicant and will not be considered for funding. Application deficiencies will be processed in accordance to 10 TAC §53.58(c). An applicant may appeal decisions made by the Department in accordance with 10 TAC §1.7

This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

RESOLUTION REQUIREMENTS

The Department requires that all applications submitted must include an original resolution from the applicant's direct governing body, authorizing the submission of the application.

AUDIT REQUIREMENTS

An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

CONTACT INFORMATION

Questions regarding this NOFA should be addressed to:

Sandy M. Garcia

HOME Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 475-1391

e-mail: sandy.garcia@tdhca.state.tx.us

TRD-200701903
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 16, 2007

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HOME Investment Partnerships Program Notice of Funding Availability (NOFA)

PY 2007 Tenant Based Rental Assistance Program Directed to Assist Persons with Disabilities

The Texas Department of Housing and Community Affairs (Department) announces the availability of approximately $2,000,000 of the 2007 HOME Investment Partnerships Program (HOME) Tenant Based Rental Assistance for Persons with Disabilities. The availability and use of these funds is subject to the State HOME Rules (10 TAC Chapter 53) and the Federal HOME regulations governing the HOME Program (24 CFR Part 92), unless specifically stated herein.

ALLOCATION OF PY 2007 FUNDS

Section 2306.111(d), Texas Government Code, requires the Department to allocate housing funds awarded in the HOME Program to each Uniform State Service Region utilizing the Regional Allocation Formula developed by the Department. The use of the Regional Allocation Formula is statutory and must be adhered to by the Department.

Section 2306.111(c), Texas Government Code, requires the Department to allocate no less than 95 percent of the HOME Program Funds to applicants which serve households located in a non-participating jurisdiction (non-PJ). Five percent (5%) of the total HOME 2007 allocation, up to $2 million dollars across all HOME eligible activities, may be expended in a participating jurisdiction (PJ), only if it provides assistance to persons with disabilities. Under this NOFA, approximately $1 million dollars will be targeted to assist households in a Participating Jurisdiction (PJ), however, this may be adjusted at the discretion of the Department not to exceed the $2 million cap. Applications will be accepted by the Department until **Friday, June 15, 2007** under a competitive method utilizing the Regional Allocation Formula. If the maximum amount of HOME funds allowed in a PJ are awarded during the competitive cycle, no further HOME funds will be awarded in a PJ. Applicants desiring to serve all or part of their targeted households within the boundaries of a participating jurisdiction must designate the number of households to be served in PJs.

ELIGIBLE APPLICANTS

* Units of General Local Government

* Nonprofit Organizations

* Public Housing Authorities (PHAs)

ALLOCATION AND RECOMMENDATION PROCESS

All applications for funds received are reviewed for threshold requirements regarding application documentation and compliance with Department requirements. All applications are subject to the Regional Allocation Formula and are evaluated competitively.

Pursuant to the Regional Allocation Formula, the table below shows the targeted allocation of HOME funds to each Uniform State Service Region and the corresponding rural and urban/ex-urban distribution within each region for each HOME activity. Applicants are strongly encouraged to apply based on their program's needs and capabilities for administration even if that amount exceeds the targeted formula in their region and sub-region (urban/exurban or rural component of a region)

The process to be used for competitive submissions follows:

* The Department identifies the region and sub-region based on the location of where the tenant will reside, not the location of where the tenant originally was living or the location of the applicant.

* First, applications will be reviewed for threshold eligibility, then scored and ranked from highest to lowest scores in their respective region. Funding recommendations to the Board will be made beginning with the highest scoring eligible application in each sub-region and will continue to be recommended down the eligible application list by score in that sub-region until all targeted funds for that sub-region have been committed.

* Second, if no eligible applications are received in a sub-region, the targeted funds for that sub-region will be merged with the other targeted funds for that region.

* Third, if no eligible applications are received in a region, the targeted fund for that region will be merged with all other similarly undersubscribed funds from other regions and utilized to fund additional eligible applications in regions that have more eligible applications than funds available.

* If the high-scoring or only eligible applications for a sub-region or region exceed the amount of funds targeted for that sub-region or region, they may still be funded in the amount requested to the extent funds are available from regions with unutilized targeted funds.

* To the extent that the total amount of funds requested competitively by eligible applications does not exceed the $2 million available for this NOFA, all eligible applications may be recommended to the Board for award regardless of region or sub-region unless they exceed the limit in PJs.

Table 1. Regional, Rural, and Urban/Exurban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban/ Exurban Funding Amount	Urban/ Exurban Funding %
1	Lubbock	$121,003	6.1%	$120,981	100.0%	$21	0.0%
2	Abilene	$90,332	4.5%	$88,219	97.7%	$2,113	2.3%
3	Dallas/Fort Worth	$355,466	17.8%	$97,964	27.6%	$257,502	72.4%
4	Tyler	$242,969	12.1%	$214,093	88.1%	$28,876	11.9%
5	Beaumont	$120,487	6.0%	$102,250	84.9%	$18,237	15.1%
6	Houston	$137,997	6.9%	$62,148	45.0%	$75,849	55.0%
7	Austin/Round Rock	$82,675	4.1%	$45,086	54.5%	$37,590	45.5%
8	Waco	$67,156	3.4%	$41,418	61.7%	$25,737	38.3%
9	San Antonio	$112,066	5.6%	$86,994	77.6%	$25,072	22.4%
10	Corpus Christi	$146,520	7.3%	$119,562	81.6%	$26,958	18.4%
11	Brownsville/Harlingen	$360,519	18.0%	$237,297	65.8%	$123,222	34.2%
12	San Angelo	$108,020	5.4%	$40,703	37.7%	$67,317	62.3%
13	El Paso	$54,790	2.7%	$35,202	64.2%	$19,588	35.8%
	Total	$2,000,000	100.0%	$1,291,917	64.6%	$708,083	35.4%

It should be noted by applicants that Urban/Exurban areas are not exclusively limited to Participating Jurisdictions. It may be possible to serve households in non-Participating Jurisdictions within an Urban/Exurban area. Households identified in an application to be committed in non-Participating Jurisdictions within an Urban/Exurban area do not count against the $1 million cap for this NOFA in PJs.

DESCRIPTION OF HOME ACTIVITY

Tenant Based Rental Assistance (TBRA)

Rental subsidy and security and utility deposit assistance is provided in the form of a grant to tenants, in accordance with written tenant selection policies, for a period not to exceed twenty four months. TBRA allows the assisted tenant to move to and live in any dwelling unit with a right to continued assistance during a 24 month period with the condition that assisted families participate in a Self-Sufficiency Program. Eligible households must meet the eligibility standards as defined by the Americans with Disabilities Act and/or the definition utilized by the Promoting Independence Advisory Committee, which provides that Persons with Disabilities is defined as: (1) A person is considered to have a disability if the person has a physical, mental, or emotional impairment that (i) is expected to be of long-continued and indefinite duration; (ii) substantially impedes his or her ability to live independently; and (iii) is of such a nature that such ability could be improved by more suitable housing conditions. (2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that (i) is attributable to a mental or physical impairment or combination of mental and physical impairments; (ii) is manifested before the person attains age twenty-two; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency, and (v) reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services that are lifelong or extended duration and are individually planned and coordinated.

MAXIMUM AWARD AMOUNT AND CONTRACT TERM

The maximum award amount per activity per region for TBRA is $275,000. Applicants may apply in multiple state service regions. Up to six percent (6%) of the project request may be requested for administrative costs. In accordance with the State of Texas Low Income Housing Plan (SLIHP) no match will be required. In accordance with 10 TAC §53.54(1)(c) the contract term for TBRA shall not exceed 30 months, however, individual household assistance is limited to 24 months.

REVIEW OF APPLICATIONS

HOME project funds will be awarded competitively per State of Texas HOME Program Rules, 10 TAC §§53.50 - 53.63 for applications received by to June 15, 2007. General Selection Criteria is listed in the State of Texas HOME Program Rules, 10 TAC §§53.50 - 53.63, and forms the basis for the State's development of scoring criteria for this activity. Certain sections of the scoring criteria have been waived by the TDHCA Board of Directors, and have been revised in order to reflect specific Housing Program for Persons with Disabilities application requirements.

THRESHOLD AND SELECTION CRITERIA

Because this program is a reimbursement program, every applicant must be able to evidence a threshold standard that they demonstrate the ability to administer the program and commit at least one month of rents for the number of households identified in the application from its funds. This will require evidence of a cash reserve in at least this amount.

It will also be a threshold requirement that every applicant submit a detailed Self Sufficiency Plan. The documentation must describe the necessary components for the overall self-sufficiency plan proposed for potential tenants. This plan, like a case management plan, should detail the need of the tenant, how these needs will be addressed including any agreements with service providers, and who shall assist the tenant at meeting these needs.

In accordance with 10 TAC §53.61, Selection Criteria, applications must meet the minimum threshold score in order to be considered eligible to receive a funding recommendation. In the event of a tie between two or more applicants, the Department reserves the right to determine

which application will receive a recommendation for funding. Tied applicants may also receive a partial recommendation for funding.

The maximum score is 100 points and the mandatory threshold score is 70 points. The following selection criteria point breakdown will be utilized when scoring applications:

(1) Affordable Housing Needs Score. Points range from 0 to 7, as published by the Department. Applications for areas exclusively serving persons in PJs will receive a score of zero. Applications for areas serving persons in PJs and non-PJs will receive a weighted score based on the number of households in the PJ and non-PJ areas. Maximum 7 points.

(2) Income Targeting. Points will be awarded based on the percentage of total units targeted to specific income levels. Counties whose median income is at or below the statewide median income will receive the same number of points for income targeting when serving households at or below 50% AMFI as those counties exceeding the statewide median income targeting households at or below 30% AMFI. Maximum 20 points.

(A) 0% to 19.99% of units at 60% AMFI, 0 points;

(B) 20% to 39.99% of units at 60% AMFI, 2 points;

(C) 40% to 59.99% of units at 60% AMFI, 4 points;

(D) 60% to 79.99% of units at 60% AMFI, 6 points;

(E) 80% to 99.99% of units at 60% AMFI, 8 points;

(F) 100% of units at 60% AMFI, 10 points;

(G) 0% to 19.99% of units at 30% AMFI, an additional 0 points;

(H) 20% to 39.99% of units at 30% AMFI, an additional 2 points;

(I) 40% to 59.99% of units at 30% AMFI, an additional 4 points;

(J) 60% to 79.99% of units at 30% AMFI, an additional 6 points;

(K) 80% to 99.99% of units at 30% AMFI, an additional 8 points;

(L) 100% of units at 30% AMFI, and additional 10 points.

(3) Previous Award and Past Performance. Applicants will receive points for having received an award and performed in accordance with their contracts and Department rules. If unsatisfactory performance exists on any prior award regardless of set aside or activity, a score of zero points will result. Unsatisfactory past performance on any contract will be forgiven if 2 years from the application deadline date has elapsed. Maximum 20 points.

(A) Applicant has received a TBRA HOME award prior to 2002 and is 100% committed, drawn and programmatically closed based on the number of units contractually obligated, by application deadline date, 20 points; or

(B) Applicant has received a TBRA HOME award in 2002-2003 and funds are 100% committed and drawn based on number of units contractually obligated, by application deadline date, 17 points; or

(C) Applicant received a HOME TBRA award in 2004 and funds are 50% committed and 30% drawn by application deadline date, 14 points; or

(D) Applicant received a HOME TBRA award during 2005 and funds are 20% committed by application deadline date, 11 points; or

(E) Applicant has never received a HOME TBRA award, 8 points.

(4) Leveraging. Points will be awarded based on the dollar amount of eligible leverage in the form of funds and/or the value of leveraged services (office space, salaries, support services, etc.) as a percentage up to 25% of the requested project funds. Maximum 10 points. Percentage of leverage per Project Request:

(A) 0% to 12.49% of project request, 0 points;

(B) 12.5% to 15.5% of project request, 6 points;

(C) 15.51 to 18.5% of project request, 7 points;

(D) 18.51% to 21.5% of project request, 8 points;

(E) 21.51% to 24.99% of project request, 9 points;

(F) 25% or greater of project request, 10 points.

(5) Citizen Forms. Used as an indicator of demand, points will be awarded based on the number of completed citizen forms as a percentage of the total units proposed. Maximum of 10 points.

(A) 0% to 9.99% of forms complete, 0 points;

(B) 10% to 29.99% of forms complete, 2 point;

(C) 30% to 49.99% of forms complete, 4 points;

(D) 50% to 69.99% of forms complete, 6 points;

(E) 70% to 89.99% of forms complete, 8 points;

(F) 90% to 100% of forms complete, 10 points.

(6) Financial Oversight. Submission of 2005 or 2006 "Independent Auditor's Report", 3 points.

(7) Experience Providing Services to Persons with Disabilities. Maximum 10 points.

A total of 10 points will be awarded to organizations that have five (5) or more years experience in providing services specifically targeting the needs of persons with disabilities as evidenced by previous contracts with funding entities for these services. To satisfy this requirement, and obtain points for this category, applicant may provide evidence of a partnership with an entity or organization that meets this requirement.

(8) Experience Providing Rental Voucher Services, Maximum 10 points. A total of 10 points will be awarded for organizations that have at least two (2) years experience providing rental voucher services. To satisfy this requirement and obtain points for this category, applicant may provide evidence of a partnership with an entity or organization that meets this requirement.

(9) Fostering Independence. Points will be awarded to applicants who commit to serve only individuals being transitioned from institutionalized settings into a community placement or community setting, i.e. like the Olmstead population. Maximum 10 points.

APPLICATION PROCEDURES, FINAL FILING

The HOME Application Guide for this NOFA is available on the Department's website at www.tdhca.state.tx.us or you may call (512) 463-8921 to request a copy. Applications must be submitted on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

Applications mailed via the U.S. Postal Service must be mailed to:

Texas Department of Housing & Community Affairs

HOME Division

P.O. Box 13941

Austin, Texas 78711-3941

Applications mailed by private carrier or hand-delivered will be received at the physical address of:

Texas Department of Housing & Community Affairs

HOME Division

221 E. 11th Street

Austin, Texas 78701

Applicants are required to remit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per application. Please send check, cashier's check, or money order; do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive grant application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status in lieu of the application fee. The application fee is not an eligible or reimbursable cost under the HOME Program.

Applications that do not meet the filing deadline and application fee requirements will be returned to the applicant and will not be considered for funding.

Application deficiencies will be processed in accordance to 10 TAC §53.58(c).

An applicant may appeal decisions made by the Department in accordance with 10 TAC §1.7

This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations and contact the HOME Division for guidance and assistance.

RESOLUTION REQUIREMENTS

The Department requires that all applications submitted must include an original resolution from the applicant's direct governing body, authorizing the submission of the application.

AUDIT REQUIREMENTS

An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

CONTACT INFORMATION

Questions regarding this NOFA should be addressed to:

Sandy Garcia

HOME Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 475-1391

e-mail: sandy.garcia@tdhca.state.tx.us

TRD-200701904
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 16, 2007

♦ ♦ ♦

HOME Investment Partnerships Programs Notice of Funding Availability (NOFA)

Supporting New Job Creation and Economic Development in Rural Texas

Summary

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $5,000,000 in federal funding from the HOME Investment Partnerships Program (HOME) to develop affordable rental housing for low-income Texans in conjunction with rural economic development projects that have been recently developed or are currently under development. The availability and use of these funds is subject to the State HOME Rules at Title 10, Texas Administrative Code (10 TAC), Chapter 53 ("HOME Rules") in effect at the time the NOFA is released, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR) Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

Allocation of HOME Funds

These funds are made available through de-obligated HOME funds that the Department has distributed through the Regional Allocation Formula and have remained unutilized or been returned by the original applicant. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80 percent or less of the Area Median Family Income (AMFI).

Funding must be tied to the creation of new or expanded job opportunities in non-participating jurisdictions within the past 18 months for rural Texas. The jobs created must not be related, directly or indirectly, to the operation or construction of the proposed housing development. Projects where limited housing is a factor in the overall site selection for new businesses or institutions will be a priority. Only development sites where businesses or institutions that are new or expanding and will employ at least ten persons (new positions) from the area will be considered. Such new employment locations must be no more than twenty miles from the proposed housing development site. Development of business facilities must be underway at the time of application and/or be no more than 18 months from the opening date of the facility. The application must provide evidence of a definite and long-term employment commitment from the business or institution. The term of the commitment must be consistent with the federal tier of affordability for the affordable housing development described in § 4(b)(i) of this NOFA.

Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ).

In accordance with 10 TAC §53.58, this NOFA will be an Open Application Cycle; and funding will be available on a first-come, first-served Statewide basis. Applications will be accepted until 5:00 p.m., October 1, 2007 unless all funds are committed prior to this date. Applicants are encouraged to review the application process cited above. Applications that do not meet minimum threshold, minimum score or financial feasibility will not be considered for funding recommendations.

The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low, and extremely low-income individuals and families. Award amounts are limited to no

more than $3 million per development, pursuant to 10 TAC §53.54(2). The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the total development costs. The remaining 10% of total development costs must be in the form of loans or grants from private or public entities. The per-unit subsidy may not exceed the per-unit dollar limits established by United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act which are applicable to the area in which the development is located and as published by HUD. The Department will evaluate the net operating income of the Development and the existing debt service capacity to determine if the award will be made in the form of a loan or grant or a combination thereof. The Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35, a loan or partial loan will be recommended.

Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development, the entire unit must be brought up to the applicable property standards pursuant to 24 CFR §92.251(a)(1).

Funds will be awarded in accordance with the rules and procedures as set forth in the State HOME Program rules at 10 TAC §§53.50 - 53.63. The Department may, at its discretion and based upon review of the financial feasibility of the development conducted in accordance with 10 TAC §1.32, determine to award HOME funds as either a loan or as a grant. Loans cannot exceed amortization of more than 40 years.

Eligible and Ineligible Applicants

The Department provides HOME funding from the federal government to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities, and units of local government.

Applicants may be ineligible for funding if they meet any of the criteria listed in §53.53(b) of the Department's HOME rule, clarification for §53.53(b)(6) creates ineligibility with any requirements under 10 TAC 49.5(a) of this title excluding subsections (5) - (8) or 10 TAC §1.3. Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

Affordability Requirements

Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to persons below 50% AMFI. Over the remaining affordability period, at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI; all remaining units must be affordable to persons earning 80% or less than the AMFI.

Each development will have a two-tier affordability term.

*The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than $15,000 per unit; 10 years if the HOME investment is $15,000 to $40,000 per unit; and 15 years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds, and affordability.

*The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

Properties will be restricted under a Land Use Restriction Agreement ("LURA") or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

Match Requirements

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

Site and Development Restrictions:

Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, International Building Code (IBC) or its appropriate sub code, and/or the Minimum Property Standards (MPS) in 24 CFR §200.925 and §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on an MPS inspection performed by a qualified person. If no other and more stringent property standard is applicable, the Texas Minimum Construction Standards (TMCS) should be used as a minimum standard of acceptability. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements; and if there are no such standards or code requirements, the housing must meet the Housing Quality Standards (HQS) in 24 CFR §982.401. When HOME funds are used for a rehabilitation development, the entire unit must be brought up to the applicable property standards pursuant to 24 CFR §92.251(a)(1).

Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601- 3619). Additionally, pursuant to the 2007 Qualified Allocation Plan (QAP), §49.9(h)(4)(G), developments involving new construction (excluding new construction of nonresidential buildings) where some units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e., one-bedroom, two-bedroom, three-bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines and include a minimum of one

bedroom and one bathroom or powder room at the entry level. A certification will be required after the development is completed from an inspector, architect, or accessibility specialist. Any developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

All of the 2007 Qualified Allocation Plan and Rules, 10 TAC §49.6, excluding subsections (d), (f), (g), and (h) applies to any housing proposed under this NOFA.

Developments involving new construction will be limited to 76 units. This maximum unit limitation also applies to those developments which involve a combination of rehabilitation and new construction. The minimum number of units shall be 4 units pursuant to 10 TAC §53.53(f).

Proposed units may be scattered sites but must be organized as one project. Unit types may be single family, duplex, triplex, fourplex, or larger; but applicants should be aware that scattered site and certain building types may add to the project cost, present zoning, and infrastructure issues and contribute other difficulties that may make the proposed development infeasible as affordable housing.

Threshold Criteria

Evidence of a definite and long-term employment commitment from a business or institution will be required to be consistent with term of the federal tier of affordability for the housing development described in § 4(b)(i) of this NOFA. The evidence must demonstrate that a minimum of 10 new full-time paid positions will be created as a result of this activity. The jobs created must not be related, directly or indirectly, to the operation or construction of the proposed housing development. The evidence must be a written certification from the most senior officer or Board of Directors of the business or institution that indicates the minimum number of positions to be created, the timeline for facility development, proof of capital investment, and other pertinent details.

Housing units subsidized by HOME funds must be affordable to low, very-low, or extremely low-income persons. Mixed income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

For funds being used for rental housing developments, the recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37 pursuant to 10 TAC §53.53(i).

All applications will be required to meet HQS detailed under 24 CFR §982.401, TMCS, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current IBC.

Pursuant to 10 TAC §53.53(j), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications a minimum of 14 days prior to the submission of an application package will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

*the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

*all neighborhood organizations whose defined boundaries include the location of the Development;

*executive officer and Board President of the school district that covers the location of the Development;

*residents of occupied housing units that may be rehabilitated, reconstructed, or demolished; and

*the State Representative and State Senator whose district covers the location of the Development.

*The notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith, pursuant to 10 TAC §53.53(k).

All contractors, consulting firms, and Administrators must sign an affidavit to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions pursuant to §53.53(l).

The application must meet all of the requirements of the 2007 QAP and Rules at 10 TAC §49.9(h), excluding subsections (4)(I), (11), (12), and (15) with the exception of (14), Supplemental Threshold Reports. The deadline for submission of the Supplemental Threshold Reports is the date of the application submission. If the Supplemental Threshold Reports are not submitted in conjunction with the application, the application will be terminated.

Selection Process

Distribution.

Awards will be made on a statewide basis.

Scoring Criteria.

Applicants may receive up to 103 points based on the scoring criteria listed below and must obtain a minimum score of 70 points to be considered for award. Evidence of these items must be submitted in accordance with the 2007 Final Application Submission Procedures Manual (ASPM), effective as of the date of issuance of this NOFA. Applicants must also select each item as part of their self score to receive points. The scoring criteria to be used are:

New Job Creation per Unit Proposed -

Applications will be awarded points for the number of positions per units of housing for persons currently earning at or below 60% AMFI. The jobs created must not be related, directly or indirectly, to the operation or construction of the proposed housing development. To receive points, the activity must provide one new full-time paid position for each unit proposed.

*For activities that create at least 1 new position per unit proposed but less than 1.5 positions per unit proposed: 10 points.

*For activities that create at least 1.5 new positions per unit proposed: 20 points. Maximum 20 Points.

New Job Creation -

Applications will be awarded points for the number of new full-time paid positions created. The jobs created must not be related, directly or indirectly, to the operation or construction of the proposed housing development. One point will be awarded for every 5 new positions over the minimum 15 new positions required. Maximum 15 Points.

Public Private Partnership -

5 points will be awarded to applicants that can provide a memorandum of understanding between the business entity and a local economic development corporation that indicates the commitment of the economic development corporation to the business entity, and 5 points will be awarded for a resolution from the local government endorsing both the housing and the business entity. Maximum 10 Points.

Leveraging of Public and Private Financing:

To encourage the involvement of other public agencies and private entities in affordable housing, applicants will receive 5 points if their HOME request represents greater than 25% but less than 50% of the total development costs, or will receive 10 points if their HOME request represents less than 25% of the total development costs. Applications requesting 50% or more of the total development costs through a HOME award will receive no points. Applicants may use the estimated equity value of Housing Tax Credits in the calculation of leveraged financing. Maximum 10 Points.

Extremely Low-Income Targeting.

To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants will receive 5 points for proposed developments that provide at least 5% of units to families or individuals earning 30% or less of the area medium income for the development site. Applicants will receive 10 points for proposed developments that provide at least 10% of units to families or individuals earning 30% or less of the area medium income for the development site. Rents for these units targeting families or individuals earning 30% or less of the area medium income may not exceed the Department's 30% rent limits for the Housing Trust Fund and Housing Tax Credit programs. Maximum 10 Points.

Matching Funds:

To ensure that the Department continues to meet its federal obligation to provide matching funds under the HOME program, Applicants will receive 3 points for having at least 10% of their total development costs covered by eligible HOME matching financing, or will receive 7 points for having at least 5% of their total development costs covered by eligible HOME matching financing, as outlined in the application materials. Applicants with less than 5% of their total development costs covered by match financing will receive no points. Maximum 7 Points.

Location of Development:

To encourage the creation of rental housing in communities where affordable units may not already exist, applicants will receive 5 points for developments that are located in Cities or Places that have no other affordable rental developments that have received funding from the Department. Maximum 5 Points.

Cost-Effectiveness of a Proposed Development:

To encourage reasonable and cost effective building strategies, applicants will receive 10 points for developments that do not exceed $70 per square foot for new construction and $38 per square foot for rehabilitation. This figure will be calculated by dividing the total development costs by the total net rentable square footage. Maximum 10 Points.

Program Design.

Pursuant to 10 TAC §53.60(2), applicants will receive 10 points if evidence is provided that the proposed development meets the needs identified in the needs assessment, whether the design is complete, and whether the development fits within the community setting. Information required includes, but is not limited to: community involvement; support services and resources; scope of program; income and population targeting; marketing, fair housing and relocation plans, as applicable. Maximum 10 Points.

Capability of Applicant.

Pursuant to 10 TAC §53.60(3), applicants will receive 6 points if evidence is provided that the Applicant has the capacity to administer and manage the proposed development, demonstrated through previous experience either by the applicant, cooperating entity, or key staff (including other contracted service providers), in program management, property management, acquisition, rehabilitation, construction, real estate finance counseling and training, or other activities relevant to the proposed program and the extent to which applicant has the capability to manage financial resources, as evidenced by previous experience, documentation of the applicant or key staff, and existing financial control procedures.

Tie Breakers

Pursuant to 10 TAC §53.59(c)(4), in the event that two or more Applications were received on the same day and receive the same number of points and are both practicable and economically feasible, the Department will utilize the factors in this paragraph in the order they are presented to determine which development will receive a preference in consideration for an award. The Department may also recommend a partial funding recommendation.

The Number of Jobs Created. The number of new full-time paid positions created will be used as the first tie breaker criteria. The Applicant with the highest number of new jobs created will win the tie breaker.

Long-term Feasibility. The second tie breaker criteria will be average debt coverage ratio calculated on the Applicant's originally submitted proforma. The Applicant with the highest average debt coverage ratio over the period of time represented in the proforma will win the tie breaker.

Submission and Review Process

All applications submitted under this NOFA must be received on or before 5:00 p.m. on October 1, 2007. The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, Scoring, and Financial Feasibility as described in this NOFA.

All applications must be submitted and provide all documentation as described in this NOFA and associated application materials.

Pursuant to the QAP 49.5(a)(9) if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, it may be terminated. If an application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency.

Pursuant to 10 TAC §53.59(3), a site visit will be conducted as part of the HOME Program development feasibility review.

Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department

strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

In accordance with §2306.082, Texas Government Code and 10 TAC §53.58(d), it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

Pursuant to §2306.1112 and §2306.6731 of the Texas Government Code, after eligible Applications have been evaluated, ranked, and underwritten in accordance with this NOFA, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment is discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial.

An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

Application Submission

Application materials must be organized and submitted in the manner detailed in the 2007 Final ASPM for rental housing developments.

The application consists of three parts: bound items, unbound items, and electronic submission. A complete application for each proposed development must be submitted. Incomplete applications or improperly bound applications will not be accepted. The bound volumes of the application must be bound using red pressboard binders. Each volume must be submitted in a separate red pressboard binder. If the required documentation for a volume exceeds the capacity of one binder, a second binder may be used to subdivide the volume. Applicants must submit one complete printed copy of all application materials and one complete scanned copy stored on compact disc of the application materials as detailed in the 2007 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2007 Final ASPM.

All application materials including manuals, NOFA, program guidelines, and QAP and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold and applicable portions of the QAP requirements in effect at the time of the application submission. Applications must be on forms provided by the Department and cannot be altered or modified and must be in final form before submitting them to the Department.

Applicants are required to remit a non-refundable application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per application. Payment must be in the form of a check, cashier's check, or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the application fee. The application fee is not an allowable or reimbursable cost under the HOME Program.

Applications received after 5:00 p.m. on October 1, 2007 will not be accepted. The deadline is strictly adhered to; therefore, the Department strongly encourages you to consider traffic and travel delays when planning your submission. For questions regarding this NOFA please contact Skip Beaird at (512) 475-0908 or via e-mail at skip.beaird@tdhca.state.tx.us or Barbara Skinner at (512) 475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us.

Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs

HOME Division

221 East 11th Street

Austin, TX 78701-2410

Or via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

HOME Division

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200701905
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 16, 2007

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Request for Proposals to Provide Market Analysis of the Dallas-Plano-Irving Metropolitan Division

I. PURPOSE OF THE REQUEST

The Texas Department of Housing and Community Affairs ("the Department" or "TDHCA") is requesting proposals to provide market analysis relating to affordable housing in the Dallas-Plano-Irving Metropolitan Division ("the Dallas MD"). The Dallas MD contains the counties of Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman and Rockwall as identified in Office of Management and Budget Bulletin No. 03-04. The market analysis report will be made available to the public and may be used by TDHCA to aid in decisions regarding its various programs.

II. SCOPE OF WORK

The selected proposal will evaluate the need for additional affordable rental housing in the Dallas MD and issue a user friendly report for

TDHCA. The respondent will define and analyze submarkets within the Dallas MD as part of the overall report. Each submarket analysis will contain the following:

A. General and Demographic Information

1. Describe the submarket's general characteristics including a map and an explanation for the selection of the boundaries. Where applicable, proposed submarkets should consider submarket boundaries established by the local apartment association. Discuss the predominant form of local government and all local government jurisdictions including overlaps and shared responsibilities. Provide additional maps of the submarket clearly identifying major transportation linkages and significant area amenities including retail, medical and educational facilities. Submarket maps should be sufficiently detailed to allow the reader to identify specific sites within the boundaries. Include maps displaying population density.

2. Describe the current economy for the submarket including existing major industries and any new or anticipated major employment impacts including significant incentives offered for corporate relocation.

3. Provide 2000 US Census data, current year estimates and five year projections for population and households, citing current, commonly used and well documented data sources. Provide a breakdown of households by tenure, income, household size, and age of head of household. Provide an analysis of the trends and/or shocks indicated by the data.

4. Consider existing studies of housing demand for the Dallas MD conducted by other entities.

B. Housing Supply Analysis

1. Describe the existing housing supply including total number of units, occupancy, absorption, tenure, turnover, number of bedrooms, typical square footages, unit and development amenities and overall condition and quality of rental housing stock. Include information on population served (market rate, low income, and project-based assistance) and targeted population (family, independent senior and special needs populations). Provide occupancy rate for all Low Income Housing Tax Credit units by income group and number of bedrooms. Provide absorption information for all developments completed within the last two years.

2. Provide an analysis of the existing housing supply and its effect on the demand for new modern units. Include an inventory of all existing affordable housing, including Public Housing and location of Housing Choice Vouchers currently in use. Discuss waiting lists for affordable housing. Address condition and redevelopment plans for Public Housing Authority housing, and identify rental housing with significant reported code violations within each submarket.

3. Describe all rental developments with rents affordable to households earning up to 100% of the area median income including those approved by TDHCA, under construction or unstabilized (less than one year at 90% occupancy). Discuss planned properties in the submarket and provide an assessment of their impact on the market in relation to demographic trends. Include a property delivery timeline summarizing projected construction periods, placement in service, and lease-up periods.

4. Provide rental data including rental housing stock by population served (market rate, low income and project-based assistance) and type of occupancy (family, independent senior and special needs populations). Include current rents charged, typical concessions, market vacancy rates and absorption rates. Include a comparison of the market rents and the Low Income Housing Tax Credit program maximum rents. Submarket maps should provide location of individual market rate multifamily properties and location of individual subsidized affordable multifamily properties.

C. Analysis of Anticipated Demand

1. Provide detailed analysis of total demand by income group (less than 30%, 31% to 40%, 41% to 50%, 51% to 60% and 60% to 80%, 81% to 100% of AMFI), number of bedrooms, and targeted population (family, independent senior, and special needs populations).

2. Provide a clear identification of the demand calculation methodology. The demand calculation methodology may ultimately be developed collaboratively with the Department. The demand calculation should include population and household growth and other sources that will be defined and mutually agreed to by the Contractor and the Department. The demand calculation methodology will be consistent throughout the market study based on targeted population. The demand calculation is not limited to that required under Title 10 of the Texas Administrative Code Section 1.33. Two independent models of demand are required and are generally described below.

a. Demand based upon strict need, comprised from:

i. Household growth;

ii. Cost overburdened households;

iii. Overcrowding;

iv. Substandard housing; and,

v. Demand from other non-overlapping sources.

b. Demand based upon traditional transitory patterns, comprised from:

i. Household growth;

ii. Turnover; and,

iii. Demand from other non-overlapping sources.

3. The demand analysis should identify the demand for additional affordable housing units for the periods ending December 2007 (baseline), December 2008, December 2009, December 2010, and December 2011.

D. Summary and Conclusions

Present summary and conclusions for each submarket in tables that identify the net affordable housing need under both a strict need demand and transitory pattern demand described in C (2) (a) and (b) above by income group, number of bedrooms, and targeted population. The net affordable housing need equals the total demand less existing, approved, under construction and unstabilized supply.

E. Appendix

Include demographic data used to complete the analysis, any relevant third party information, and a list of references cited in the body of the report.

III. RESPONSE TIME FRAME AND OTHER INFORMATION

Response submission period: May 11 - June 15, 2007

TDHCA Notification: July 1, 2007

Draft Analysis: September 1, 2007

Final Analysis: October 1, 2007

Proposals must comply with rules and statutes relating to purchasing in the State of Texas. Late and/or unsigned proposals will not be considered. The person submitting the proposal must have the authority to bind the organization in a contract. Submissions received after 5:00 P.M. (CST) on June 15, 2007 will not be considered.

Three hard copies of the proposal should be delivered to the following address: (facsimiles will not be accepted)

Texas Department of Housing and Community Affairs

Attn: Tom Gouris, Real Estate Analysis

221 East 11th Street

P.O. Box 13941

Austin, TX 78711-3941

(512) 475-1470

All costs directly or indirectly related to the preparation of a response to this RFP shall be the sole responsibility of and shall be borne by the respondent.

It is the express policy of the Department that parties responding to this request refrain from initiating any direct contact or communication with members of the Board of Directors with regard to this Request for Proposals during the selection process. Any violation of this policy will be considered a basis for disqualification.

Additional information regarding this RFP may be obtained from Tom Gouris at TDHCA. All requests must be in writing to (512) 475-4420 (fax) or tom.gouris@tdhca.state.tx.us (email). All questions and responses will be made available to all applicants via the Department's website (www.tdhca.state.tx.us/rea/) and will be subject to disclosure under the Public Information Law.

TDHCA shall not be obligated to proceed with any action and may decide it is in the Department's best interest to refrain from pursuing any selection process.

IV. RESPONSE FORMAT

A. Each item in Section V of this Request for Proposals must be addressed.

B. Identify the item to be addressed in the introduction to each response.

C. Please limit your response to 20 pages of text with additional information such as sample work, additional resumes and references submitted in appendix form.

V. PROPOSAL CONTENT

A. General Information

Provide information regarding the applicant including, but not limited to:

1. Resumes of personnel assigned to the market analysis prepared under this RFP;

2. Number of market studies performed by the respondent for multifamily properties including those prepared according to the TDHCA Real Estate Analysis Rules and Guidelines; attach a descriptive list of types of assignments performed since 2000; a complete list of assignments performed is not necessary, but may be included in the appendix;

3. Description of market analysis similar in size and scope to that required by this RFP;

4. Description of familiarity with transactions involving federal and state housing programs;

5. Description of unique qualifications including experience specific to the Dallas MD area;

6. Certification that the respondent and its principals and key staff assigned to this proposal does not currently and is not anticipated to have an ownership interest in an entity that will apply for an allocation of funds or tax credits for affordable housing from the Department within twelve months of the due date; additional certification that the respondent and its principals and key staff assigned to this proposal does not currently and is not anticipated to have an ownership interest in an entity that will enter into contract to sell property associated with an allocation of funds or tax credits for affordable housing from the Department within twelve months; additional certification that the respondent has not been barred from receiving funds from the Department or has been removed from the Department's approved list of market analysts for failure to perform a market study with the Department's guidelines any time in the last 24 months.

B. Approach

1. Provide a list of the labeled submarkets with a description of the defined boundaries for each and the methodology used to determine the boundaries; include population of each;

2. Provide maps of the Dallas MD with each submarket clearly delineated and labeled;

3. Provide a description of the source data to be used and the methodology proposed for analysis;

4. Provide a detailed description of the proposed demand calculations.

C. Work Plan and Schedule

Provide a proposed work plan with specific dates for deliverables including market study outline, draft, and final draft. Identify resources to be dedicated to this assignment.

D. Fee Schedule

Provide a proposed itemized cost schedule for the market analysis.

E. Presentation of Proposal

Prepare a 20 to 30 minute presentation to be made in person by the top scoring respondents on June 27, 2007.

VI. SELECTION PROCEDURE

Proposals will be referred to a panel of TDHCA staff for evaluation and scoring. Staff will review proposals for compliance with the proposal content requirements and the potential for fulfillment of the scope of work criteria described herein. To assist in the preparation of the proposal, established criteria for review are provided below (weighted values in parentheses).

A. Evidence of respondent's experience in developing and conducting similar studies (20%).

B. Evidence that the conceptual framework - definition of submarkets, methods and analysis - is adequately developed and appropriate for the aims of the project (25%).

C. Submission of a realistic work plan, resources and timeline (20%).

D. A budget and explanation for the scope and quality needed for successful completion of the project. Emphasis placed on cost efficiency (25%).

E. Proposal presentation and in-person interview (10%) (Top 3 candidates only).

VII. WORK MADE FOR HIRE

All work performed pursuant to this agreement specifically including all deliverables developed or prepared for TDHCA is the exclusive property of the State of Texas. All right, title and interest in and to said property shall vest in the State of Texas and shall be deemed to be a work made for hire and made in the course of the services rendered pursuant to this agreement. To the extent that title to any work may not, by operation of law, vest in the State of Texas or such work that

may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the State of Texas.

TDHCA and/or the State of Texas shall have the right to obtain and to hold in its own name, copyrights, registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor agrees to give TDHCA and/or the State of Texas and any person designated by TDHCA and/or the State of Texas, reasonable assistance required to assert the rights defined in this paragraph.

VIII. LICENSE AGREEMENT

TDHCA shall grant to the awarded contractor a non-exclusive, irrevocable, world-wide, royalty-free, license to use, reproduce, distribute and display the materials created pursuant to this agreement, subject to the following terms and conditions. The license granted shall terminate on December 31, 2009 unless renewed by the parties in writing, terminated sooner in accordance with its terms, or if the agreement of which this clause is a part, is terminated for cause.

Each copy of the materials that the contractor distributes shall indicate on the cover that the creation of the material was funded by the Texas Department of Housing and Community Affairs. The contractor agrees that it will not charge a fee for the distribution of the materials, except to recover actual duplication and mailing costs. Contractor shall not create derivatives of or modify the content of the materials except with the express written consent of TDHCA.

Failure to comply with the terms of this license may result in immediate termination of the license agreement by TDHCA. Upon termination of this license agreement, contractor shall return the remaining materials to TDHCA, or shall destroy or distribute them, in accordance with the instructions of TDHCA.

With the prior approval of the Department, the contractor may update the market analysis prepared under this RFP. In the 12-month period following the due date, the contractor is required to provide an explanation if a market analysis submitted to TDHCA contains conclusions that contradict the findings of the market analysis prepared under this RFP.

IX. OPEN RECORDS

Information submitted to TDHCA is public information and is available upon request in accordance with the Texas Public Information Act, chapter 552 of the Government Code (the "Act"). An applicant submitting any information it considers confidential as to trade secrets or commercial or financial information, which it desires not to be disclosed, must clearly identity all such information in its proposal. If information so identified by an applicant is requested from TDHCA, the applicant will be notified and given an opportunity to present its position to the Texas Attorney General, who shall make the final determination as to whether such information is excepted from disclosure under the Act. Information not clearly identified as confidential will be deemed to be non-confidential and will be made available by TDHCA upon request.

TRD-200701871
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 15, 2007

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by QUALITY HEALTH PLANS INSURANCE COMPANY, INC., a foreign life, accident and/or health company. The home office is in Holiday, Florida.

Application to change the name of ATLANTIC TITLE INSURANCE COMPANY to TRANSUNION NATIONAL TITLE INSURANCE COMPANY, a foreign title company. The home office is in Columbia, South Carolina.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200701901
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 16, 2007

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of ARCHSTONE FINANCIAL, LLC, a DOMESTIC third party administrator. The home office is RICHARDSON, TEXAS.

Application of THOMAS H. COOPER & CO., INC., a FOREIGN third party administrator. The home office is CHARLESTON, SOUTH CAROLINA.

Application to change the name of KS MANAGEMENT SERVICES, L.L.P. (Doing Business As KELSEY-SEYBOLD CLINIC) to KS MANAGEMENT SERVICES, L.L.C., a DOMESTIC third party administrator. The home office is HOUSTON, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200701900
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 16, 2007

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Texas Lottery Commission

Instant Game Number 762 "Yahtzee"

1.0 Name and Style of Game.

A. The name of Instant Game No. 762 is "YAHTZEE." The play style for this game is "poker."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 762 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 762.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL and 6 DICE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 762 - 1.2D

PLAY SYMBOL	CAPTION
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THR
4 DICE SYMBOL	FOR
5 DICE SYMBOL	FIV
6 DICE SYMBOL	SIX

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 762 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $250 or $500.

I. High-Tier Prize - A prize of $2,500 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (762), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 762-0000001-001.

L. Pack - A pack of "YAHTZEE" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "YAHTZEE" Instant Game No. 762 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "YAHTZEE" Instant Game is determined once the latex on the ticket is scratched off to expose 50 (fifty) Play Symbols. If a player's ROLL across matches a WINNING COMBINATION in the LEGEND, the player wins PRIZE shown for that WINNING COMBINATION. Each ROLL is played separately. Only the highest prize paid per ROLL. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 50 (fifty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 50 (fifty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The dice play symbols will be approximately evenly distributed among their possible locations.

C. No duplicate non-winning ROLLS in the same order on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "YAHTZEE" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $250 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $250 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "YAHTZEE" Instant Game prize of $2,500 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "YAHTZEE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "YAHTZEE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "YAHTZEE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 762. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 762 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	892,080	7.94
$4	495,600	14.29
$5	84,960	83.33
$10	84,960	83.33
$20	42,480	166.67
$50	28,320	250.00
$250	5,487	1,290.32
$500	236	30,000.00
$2,500	59	120,000.00
$25,000	10	708,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 762 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 762, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701912
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 16, 2007

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Instant Game Number 825 "$1 Million Extravaganza"

1.0 Name and Style of Game.

A. The name of Instant Game No. 825 is "$1 MILLION EXTRAVAGANZA." The play style for Game 1 is "key number match." The play style for Game 2 is "three in a line." The play style for Game 3 is "key symbol match." The play style for game 4 is "key number match with auto win."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 825 shall be $20.00 per ticket.

1.2 Definitions in Instant Game No. 825.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $20.00, $30.00, $40.00, $50.00, $80.00, $100, $200, $400, $1,000, $10,000, $ONE MILL, CLOVER SYMBOL, STAR SYMBOL, BELL SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL SYMBOL, DOLLAR BILL SYMBOL, MONEY BAG SYMBOL, COIN SYMBOL, HORSE SHOE SYMBOL, DOLLAR SIGN SYMBOL, TOP HAT SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 10X SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 825 - 1.2D

PLAY SYMBOL	CAPTION
$20.00	TWENTY
$30.00	THIRTY
$40.00	FORTY
$50.00	FIFTY
$80.00	EIGHTY
$100	ONE HUND
$200	TWO HUND
$400	FOR HUND
$1,000	ONE THOU
$10,000	10 THOU
$ONE MILL	ONE MIL
CLOVER SYMBOL	
STAR SYMBOL	
BELL SYMBOL	BELL
DIAMOND SYMBOL	DMND
GOLD BAR SYMBOL	BAR
DOLLAR BILL SYMBOL	DOLR
MONEY BAG SYMBOL	BAG
COIN SYMBOL	COIN
HORSE SHOE SYMBOL	SHOE
DOLLAR SIGN SYMBOL	MONEY
TOP HAT SYMBOL	TPHAT
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
10X SYMBOL	WINX10

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 825 - 1.2E

CODE	PRIZE
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low Tier Prize - A prize of $20.00

H. Mid-Tier Prize - A prize of $30.00, $40.00, $50.00, $80.00, $100, $200 or $400.

I. High-Tier Prize - A prize of $1,000, $10,000 or $1,000,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (825), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 825-0000001-001.

L. Pack - A pack of "$1 MILLION EXTRAVAGANZA" Instant Game tickets contains 25 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 025 will both be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$1 MILLION EXTRAVAGANZA" Instant Game No. 825 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$1 MILLION EXTRAVAGANZA" Instant Game is determined once the latex on the ticket is scratched off to expose 55 (fifty-five) play symbols. In Game 1, if a player matches any of YOUR AMOUNTS play symbols to either of the LUCKY AMOUNT play symbol, the player wins that amount. In Game 2, if a player reveals 3 "star" play symbols in any one row, column or diagonal, the player wins prize shown in PRIZE box. In Game 3, if a player reveals 3 matching play symbols in the same PLAY, the player wins prize shown in legend. In Game 4, if a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins prize shown for that number. If a player reveals a "10X" play symbol, the player wins 10 times the prize shown instantly. No portion of the display printing or any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 55 (fifty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 55 (fifty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 55 (fifty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The $10,000 and $1,000,000 prize levels will always appear on non-winning tickets and will each appear on $1,000 and lower winning tickets when prize structure permits.

C. Game 1: No duplicate non-winning play symbols.

D. Game 2: Only the star play symbol will appear 3 (three) times in a row, column or diagonal.

E. Game 2: There will be a minimum of 4 (four) star play symbols.

F. Game 3: No duplicate non-winning PLAYs in any order.

G. Game 3: There will be many near wins (2 (two) matching symbols within a PLAY).

H. Game 3: There will be no three matching non-winning play symbols in a horizontal row which consists of two PLAYS.

I. Game 4: No duplicate WINNING NUMBERS play symbols.

J. Game 4: No duplicate non-winning YOUR NUMBERS play symbols.

K. Game 4: No duplicate non-winning prize symbols in this game.

L. Game 4: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and $10).

M. Game 4: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

N. Game 4: The "10X" symbol (win 10 times) will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "$1 MILLION EXTRAVAGANZA" Instant Game prize of $20.00, $30.00, $40.00, $50.00, $80.00, $100, $200 or $400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $40.00, $50.00, $80.00, $100, $200 or $400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$1 MILLION EXTRAVAGANZA" Instant Game prize of $1,000 or $10,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "$1 MILLION EXTRAVAGANZA" top level prize of $1,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "$1 MILLION EXTRAVAGANZA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$1 MILLION EXTRAVAGANZA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$1 MILLION EXTRAVAGANZA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,840,000 tickets in the Instant Game No. 825. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 825 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$20	576,000	6.67
$30	384,000	10.00
$40	115,200	33.33
$50	76,800	50.00
$80	115,200	33.33
$100	51,200	75.00
$200	12,640	303.80
$400	3,616	1,061.95
$1,000	1,024	3,750.00
$10,000	48	80,000.00
$1,000,000	4	960,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 825 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 825, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701913
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 16, 2007

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Instant Game Number 839 "Monthly Bonus"

1.0 Name and Style of Game.

A. The name of Instant Game No. 839 is "MONTHLY BONUS." The play style is "key number match with auto win."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 839 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 839.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, DOLLAR BILL SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $200, $2,000, $10,000 and $20,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 839 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
DOLLAR BILL SYMBOL	WIN
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$10,000	MO/20YRS
$20,000	20 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 839 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $60.00 or $200.

I. High-Tier Prize - A prize of $2,000, $20,000 or $10,000/MO ($10,000 per month for 20 years).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (839), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 839-0000001-001.

L. Pack - A pack of "MONTHLY BONUS" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONTHLY BONUS" Instant Game No. 839 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONTHLY BONUS" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a dollar bill play symbol, the player wins $10,000 per month for 20 years. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate LUCKY NUMBERS play symbols on a ticket.

D. No more than four like non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

G. The "dollar bill" and $10,000 prize symbol will only appear on intended winning tickets as dictated by the prize structure and will only appear with each other.

H. The $20,000 prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONTHLY BONUS" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $60.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $50.00, $60.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONTHLY BONUS" Instant Game prize of $2,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONTHLY BONUS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. To claim a "MONTHLY BONUS" top level prize of $10,000/MO for 20 years, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. When claiming a "MONTHLY BONUS" Instant Game prize of $10,000 per month for 20 years, the claimant must choose one of two (2) payment options for receiving his prize:

1. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $10,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each month on the first business day of the month for a combined total of $120,000 per year. Monthly payments will be made for a period of 20 years or a total of 240 monthly payments to reach the total maximum payment of "$2,400, 000."

2. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $120,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 20 years or a total of 20 annual to reach the total maximum payment of $2,400,000.

3. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 839. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 839 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	2,500,000	6.00
$10	700,000	21.43
$15	100,000	150.00
$20	300,000	50.00
$25	100,000	150.00
$50	200,000	75.00
$60	37,375	401.34
$200	7,750	1,935.48
$2,000	235	63,829.79
$20,000	40	375,000.00
$10,000/MO	4	3,750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 839 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 839, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701914
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 16, 2007

♦ ♦ ♦

Lower Rio Grande Valley Development Council

Request for Qualifications, Hidalgo County Regional Mobility Authority, Southern Loop Project

The Hidalgo County Regional Mobility Authority (the "HCRMA") located at 311 N. 15th Street, McAllen, Texas; hereby requests Sealed Request for Qualifications for the following title:

Plan and Develop The Hidalgo County Regional Mobility Authority Southern Loop Project.

Request for Qualifications packets may be obtained at the "HCRMA" offices located at the address indicated above or can be downloaded from the web site lrgvdc.org/procurement. RFQ response must be received on or before 3:00 p.m. (CST) Friday, July 06, 2007 at the address above. The envelope must be clearly marked with the RFQ Title and 'Request for Qualifications'.

It will also be published on the following website: www.lrgvdc.org.

Any informational questions for the Request for Qualifications may be directed to LRGVDC Procurement Officer at (956) 682-3481.

The "HCRMA" reserves the right to reject any and all proposals submitted, and reserves the right to seek new proposals if it is in the best interest of the "HCRMA." The "HCRMA" reserves the right to conduct interviews with any and all firms prior to selection. Request for Qualifications submitted past the date and time mentioned above will not be accepted.

PART A

BACKGROUND AND INSTRUCTIONS

I. INTRODUCTION

The Hidalgo County Regional Mobility Authority (the "Authority"), a regional mobility authority created pursuant to Chapter 370, Texas Transportation Code, hereby requests the sealed submittal of responses (each a "Response") from entities ("Proposers") desiring to plan and develop all or portions of the Authority's Southern Loop Project (the "Project", attached hereto as Exhibit A) pursuant to the delivery mechanisms and financing tools available for such Project under the Texas Transportation Code (the "Code"), Chapters 370 and 222, and Title 43, Texas Administrative Code (the "Rules").

Selection of a winning Proposer(s) may occur in a two-step process, including written responses to this RFQ and interviews of those Proposers included in a "short list" of preferred candidates. The Authority is issuing this RFQ in accordance with the provisions of Chapter 370 and 222 of the Code and Title 43 of the Rules and other applicable provisions of law. Proposers short-listed in Response to this Request for Competing Proposals and Qualifications (the "RFQ") will be invited to present their qualifications and proposals at an interview.

The Authority has provided a summary of the Project (the "Project Summary"), included in Exhibit A attached hereto.

II. DESCRIPTION OF PROCUREMENT PROCESS GENERAL

The Authority reserves the right to modify the procurement process in its sole discretion to address applicable law, including changes to the law adopted during the 80th Legislative Session, and/or the best interests of the Authority and Hidalgo County.

The Authority will evaluate the Responses it receives in response to this RFQ and will establish, according to criteria generally outlined herein, a short list of Proposers.

If only one responsive Response is received, the Authority may either (a) proceed with the procurement and pursue negotiations with the sole Proposer or (b) terminate this procurement. Following the short listing of Proposers, the Authority will schedule interviews and may solicit additional information and/or statements of intent from such short-listed Proposers (collectively, the Response, the interview, and any additional information required comprise the "Proposal").

Following receipt and evaluation of Proposals, the Authority may select a Proposer for negotiations, based on a determination of apparent best value, to finalize an agreement based on the applicable delivery method(s). If negotiations are not successful with the apparent best value Proposer, the Authority may negotiate with the next highest rated Proposer. Alternatively, the Authority may terminate the procurement.

This Procurement Process may result in the negotiation of a project development agreement, design-build agreement, other such agreement or combination of agreements permitted under applicable State law. It is not anticipated that this procurement will result in a private equity contribution toward the project. A response that incorporates a private equity component will be deemed to be non-responsive to this RFQ and, rather, will be considered an "unsolicited proposal" as provided for under Chapter 223 and 370 of the Code and the Rules. Similarly, it is not anticipated that this procurement will result in only the design component of the project. A response that only provides for the design component of the project will be deemed non-responsive to the RFQ.

The Authority anticipates that the Environmental Assessment and Environmental Impact Statement, if any, for the Project will be conducted under a separate procurement or in partnership with a local political subdivision and may be conducted in phases. The successful Proposer, if any, will be expected to insure that all "Environmental Permits, Issues, and Commitments" (as defined in 43 Texas Administrative Code, §26.2) are addressed in project design and construction.

PROCUREMENT SCHEDULE

The Authority anticipates carrying out the first phase of the procurement process contemplated hereby in accordance with the following schedule:

Issue Request for Qualifications--May 20, 2007

Pre-Bid Conference--May 30, 2007

Deadline for questions regarding the RFQ--June 06, 2007

Response Due Date--July 06, 2007, 3:00 pm

Selection of Short Listed Proposers--July 12, 2007

This schedule is subject to modification at the sole discretion of the Authority. Any change to this RFQ schedule will be posted as an addendum on the Website (defined below).

Interested parties should monitor the Website (lrgvdc.org) for the time and location of this conference.

QUESTIONS AND REQUESTS FOR CLARIFICATION; ADDENDA

In order to facilitate receipt, processing, and Response, Proposers must submit all questions and requests for clarification in writing to Victor Morales as follows:

Victor Morales

Lower Rio Grande Valley Development Council

311 N. 15th Street

McAllen, Texas 78501-4705

vmorales@lrgvdc.org

phone: 956-682-3481

Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the "HCRMA RFQ." The Authority will provide Responses to Proposer clarification requests within a reasonable time following receipt, subject to published deadlines. The Authority will post Responses to those questions of general application and requests for clarification which the Authority deems to be material and not adequately addressed in previously provided documents on the following website: www.lrgvdc.org (the "Website")

The Authority reserves the right to revise this RFQ by issuing addenda to this RFQ at any time before the Response due date. The Authority will post any addenda to this RFQ on the Website.

Proposers are responsible for monitoring the Website identified above for information concerning this procurement as teams responding to the this RFQ will be required to acknowledge in the transmission letter that they have received and reviewed all materials posted thereon.

FEDERAL REQUIREMENTS

Proposers are advised that assuming the Project and the Plan of Cost and Finance (if applicable) will remain eligible for federal-aid funds, the procurement documents must conform to the requirements of applicable federal law and FHWA regulations, including, but not limited to Title VI of the Civil Rights Act of 1964, as amended, regarding Equal Employment Opportunity ("EEO") and Title 49, Code of Federal Regulations Part 26, as amended, regarding Disadvantaged Business Enterprises ("DBEs").

DBE REQUIREMENTS

The Authority intends that DBEs will be used to plan, design, and construct the Project at least to the extent required for contracts issued by the Texas Department of Transportation ("TxDOT"), under Title 43 of the Rules, §§9.50 et seq., and the Federal Highway Administration ("FHWA"), under 49 Code of Federal Regulations §26.5.

III. RESPONSE CONTENT AND SUBMITTAL REQUIREMENTS

GENERAL

The Authority expects Responses submitted in response to this RFQ to provide enough information about the requested items to allow the Authority to evaluate and competitively rank and short list the Proposers based on the criteria set forth herein. There is no page requirement or limitation.

RESPONSE SUBMITTAL REQUIREMENTS

Each Proposer shall submit 10 copies of its Response. All packages constituting the Response shall be labeled as follows:

Response to the Request for Competing Proposals and Qualifications for the Hidalgo County Regional Mobility Authority

Responses shall be delivered to:

Victor Morales

Lower Rio Grande Valley Development Council

311 N. 15th Street

McAllen, Texas 78501-4705

The Authority will not accept facsimile or other electronically submitted Responses. Responses must be received by 3:00 pm on July 06, 2007. Responses received after that date and time will be rejected and returned to the sender unopened.

TRANSMITTAL LETTER

Each Response must include an original, executed transmittal letter stating the following:

(a) The Proposer is capable of obtaining adequate payment and performance bonds from a surety rated in the top two categories by two nationally recognized rating agencies or at least an "A-" or better and "Class VIII" or better by A.M. Best and Company;

(b) The Proposer has not been disqualified, removed, debarred, or suspended from performing or bidding on work for the federal government, or any state or local government where such disqualification, removal, debarment, or suspension would preclude selection and award under the Texas Department of Transportation's ("TxDOT"s") Contractor Sanction Rules (43 Texas Administrative Code, Sections 9.100 et seq.);

(c) The Proposer has the resources and financial capability to carry out the Project responsibilities potentially allocated to it under the delivery mechanism(s) and scope of the Project included in its proposal; and

(d) The Proposer has received and reviewed all addenda to the RFQ posted on the Website as of the date of its Response.

RESPONSE

(a) General Experience

i. The Proposer's General Experience should include:

a. An overview of Proposer and individual team members, including respective qualifications and experience;

b. Proposer's and individual team members' experience with comparable projects, including resumes for key personnel and management staff;

c. With respect to each comparable project specifically identified by the Proposer, the project name, owner's name, address, contact name and current email address and phone and fax numbers, dates of work performed, project description, description of work and percentage actually performed by Proposer, and project outcome or current status;

d. A list and brief description of all instances during the last five years involving transportation projects in which the Proposer (or any other organization that is under common ownership with the Proposer) was (i) determined, pursuant to a final determination in a court of law, arbitration proceeding, or other dispute resolution proceeding, to be liable for a material breach of contract or (ii) terminated for cause. For each instance, identify an owner's representative with current phone and fax number and, if available, email address; and

e. A list and brief description (including resolution) of each arbitration, litigation, dispute review board, and other dispute resolution proceeding occurring during the last five years involving a Proposer (or any other organization that is under common ownership with the Proposer) and involving an amount in excess of $250,000, related to performance in transportation projects.

ii. The Proposer's General Experience will be evaluated in accordance with the following criteria:

a. The extent and depth of the Proposer's and individual team members' experience with comparable projects;

b. The Proposer's and its individual team members' success in carrying out comparable projects and responsibilities, independently, with each other, and in combination with other firms; and

c. The extent and depth of experience of the management team and key personnel assigned to the Project.

(b) Project Plan

i. The Proposer's conceptual Project Plan should include:

a. A description of the Proposer's general approach to advancing Project planning and development, assignment of risk, the expected results from implementation of the Proposer's plan and the critical factors for the Project's success;

b. A synopsis of the Proposer's plan to engineer, design, and/or construct the improvements, including discussion of life cycle costs for alternatives, commitment of resources, and use of subcontractors and suppliers;

c. Conceptual development and implementation schedule based upon current levels of information, including, as applicable, cost of finance, start of construction, substantial completion, revenue source, final acceptance, project phasing, and/or other major milestones;

d. Approach of key Project functions, including safety, permit procurement, utility relocation and adjustment services, environmental protection, connecting facilities, ITS capabilities, and public relations;

e. Description of key assumptions used in developing the conceptual Project Plan; and

f. Materials, equipment, and qualified personnel resources available to the Proposer which it can and will commit to the planning and/or development of the Project.

ii. The conceptual Project Plan will be evaluated in accordance with the following criteria.

a. The extent to which the conceptual Project Plan is technically feasible, including a scheduling approach for project planning and/or development delineating any proposed phasing of the work and important milestone activities; and

b. The extent to which the conceptual Project Plan demonstrates the Proposer's understanding of the Project, the Authority's needs, risk associated with the Project, and the commitment of materials, equipment, and qualified personnel resources necessary to develop the Project.

(c) Conceptual Costs and Financing Plan

i. The conceptual Costs should include:

a. Cost estimates broken down, as applicable, into planning, design, construction, maintenance, major rehabilitation, and financing (using additional subcategories, such as utility adjustments, property relocation expenses, etc.), to the extent they are available;

b. Explanation of the methodology used to estimate costs and revenues (if applicable) and all supporting assumptions;

c. Identification of potential financing approaches the Proposer considers relevant to the Project, including a proposed financing strategy which presents the most efficient and effective way to finance the Project, including, if applicable, fee income related to the Project; and

d. A discussion of the risk allocation related to the Project under the conceptual Costs and Financing plan, including the following categories of risk, as applicable: (i) revenues; (ii) financing; (iii) competing facilities; (iv) existing improvements; (v) third party construction; (vi) site conditions; (vii) hazardous materials; (viii) utility relocations; (ix) technology enhancements; (x) insurance; (xi) compensation events; and (xii) relief events.

ii. The conceptual Costs and Financing plan will be evaluated in accordance with the following criteria, taking into account the level of currently available Project information, the wide variety of potential financial and funding solutions and options available for the Project, and the time period provided in this RFQ for submission of a Response, to include:

a. The reasonableness of any estimated revenues and/or other funding sources and capital costs and the approach in developing these estimates; and

b. The effectiveness and feasibility of the conceptual Costs and Financing Plan including the use of various types of financing through various available tools available under State and federal law and the timing of proposed financing.

RESPONSE EVALUATION PROCEDURE

The Authority anticipates using a committee to review and evaluate the Response in accordance with the above criteria and to make recommendations to the full Board of Directors of the Authority (the "Board") based on such analysis. At various times during the deliberations, the Authority may issue requests for written clarification to respective Proposers. The Authority will schedule interviews with the short-listed Proposers, for the purpose of enhancing the Authority's understanding of the Responses, obtaining clarifications of the information and terms contained in the Responses, and, perhaps, requesting additional information.

Evaluations and rankings of Responses are subject to the sole discretion of the Authority, Authority staff, and such professional and other advisors as the Authority may designate. The Authority will make the final determinations of the Proposers to be short-listed, as it deems appropriate, in its sole discretion, and in the best interests of Hidalgo County.

Responses will be evaluated based on the following criteria:

(a) The conceptual Project Plan--35%

(b) The conceptual Costs and Financing Plan--40%

(c) Experience of Proposer with similar projects--25%

CHANGES IN THE CONCEPTUAL PROJECT PLAN AND THE CONCEPTUAL COSTS AND FINANCING PLAN

The Authority understands that as Proposers and the Authority continue their respective and collective efforts to analyze and develop optimal development and financing plans for the Project, it is likely that the conceptual Project Plans and the conceptual Costs and Financing Plans proposed by the Proposers will change and evolve. The Authority wishes to encourage such evolution and continued focus by Proposers. Accordingly, it is the Authority's intention to use the conceptual Project Plan and the conceptual Costs and Financing Plan only for the purposes of evaluating the Responses. Proposers may modify, alter, and enhance their respective Project Plan notions and the Cost and Financing plans in conjunction with their Proposals, including changing, adding, and deleting conceptual sources of revenue and cost estimates.

Such changes should not cast doubt on the validity of the plans and concepts presented in the Response and render the Response a misrepresentation of the Proposer's intentions and capabilities.

IV. COMMUNICATIONS, PUBLIC INFORMATION, AND ORGANIZATIONAL CONFLICTS OF INTEREST

IMPROPER COMMUNICATIONS AND CONTACT The following rules of contact shall apply during the procurement for the Project, which began on the date of issuance of this RFQ and will be completed with the execution of a project development agreement or other agreement the Authority and the selected Proposer agree to. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic (e-mail), or formal written communication.

The specific rules of contact are as follows:

(a) The Proposers shall correspond with the Authority regarding the RFQ only through the Authority's and Proposer's designated representatives;

(b) Commencing with the issuance of this RFQ and continuing until the earliest of (i) execution of a project development agreement(s) or other such agreement; (ii) rejection of all Proposals by the Authority; or (iii) cancellation of the procurement, no Proposer or representative thereof shall have any ex parte communications regarding the RFQ, the Proposal, or the procurement described herein with any member of the Board or Authority staff, advisors, contractors, or consultants involved with the procurement, including attorneys and financial advisory, except for communications expressly permitted herein. This restriction shall not preclude or restrict communications with regard to matters unrelated to this RFQ or the procurement or from participating in public meetings of the Authority or any public or Proposer workshop related to this RFQ. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of the Authority.

PUBLIC INFORMATION ACT

Subject to Chapter 552 of the Texas Government Code (the "Public Information Act") and the terms of this RFQ, Responses will not be publicly opened or evaluated.

All written correspondence, exhibits, reports, printed material, photographs, tapes, electronic discs, and other graphic and visual aids submitted to the Authority during this procurement process, including as part of the Response to this RFQ, become the property of the Authority and will not be returned to the submitting parties. Except as otherwise provided by law, Responses are subject to the Public Information Act.

V. AUTHORITY RESERVED RIGHTS

In connection with this procurement, the Authority reserves to itself all rights (which rights shall be exercisable by the Authority in its sole discretion) available to it under the Code, the Rules, and applicable law, including without limitation, with or without cause and with or without notice, the right to:

a. Develop the Project in any manner that it, in its sole discretion, deems necessary;

b. Cancel this RFQ in whole or in part at any time prior to the execution by the Authority of a project development agreement(s) or other such agreement, without incurring any cost obligations or liabilities;

c. Issue a new request for qualifications after withdrawal of this RFQ;

d. Reject any and all submittals, Responses, and Proposals received at any time;

e. Modify all dates set or projected in this RFQ;

f. Terminate evaluations of Responses received at any time;

g. Suspend and terminate negotiations at any time, elect not to commence negotiations with any responding Proposer, and engage in negotiations with other than the highest ranking Proposer;

h. Issue addenda, supplements, and modifications to this RFQ;

i. Appoint evaluation committees to review Responses, make recommendations to the Board, and seek the assistance of outside technical experts and consultants in Response evaluation;

j. Require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its Response, and require additional evidence of qualifications to perform the work described in this RFQ;

k. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Response to this RFQ;

l. Add or delete Proposer responsibilities from the information contained in this RFQ;

m. Negotiate with a Proposer without being bound by any provision in its proposal; and

n. Waive deficiencies in a Response, accept and review a non-conforming Response, or permit clarifications or supplements to a Response.

This RFQ does not commit the Authority to enter into a contract or proceed with the procurement described herein.

EXHIBIT A

DESCRIPTION OF THE PROJECT

The Southern Loop Project is the south most segment of the Hidalgo County Loop. The limits are from approximately Military Highway and US 83 in Penitas, Texas to approximately FM 1015 and US 83 in Weslaco, Texas. The project should also consist of a north/south, limited access facility connecting Military Highway to US 83; the facility should be located in the area between Salinas and I Roads. The Hidalgo County Metropolitan Planning Organization has identified an estimate of $27,000,000 for the north/south segment of the project. No substantive environmental work has been done on this Southern Loop Project. This procurement process exempts current TxDOT projects along US 281.

TRD-200701902
Victor Morales
Procurement Officer
Lower Rio Grande Valley Development Council
Filed: May 16, 2007

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Public Utility Commission of Texas

Corrected Notice of Petition for Waiver of Denial of Request for Additional Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on May 8, 2007, for waiver of denial by the Pooling Administrator (PA) of Guadalupe Valley Telephone Cooperative, Inc.'s (GVTC) request for the assignment of one growth block in the Hancock rate center.

Docket Title and Number: Petition of Guadalupe Valley Telephone Cooperative, Inc. for Waiver of Denial of Numbering Resources in the Hancock Rate Center. Docket Number 34271.

The Application: GVTC requires additional numbering resources to meet the customers' demand.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 30, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34271.

TRD-200701850
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 14, 2007

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 10, 2007, Capital Telecommunications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60020. Applicant intends to reflect a change in ownership/control.

The Application: Application of Capital Telecommunications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34284.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 30, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34284.

TRD-200701859
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 14, 2007

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Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Collin County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on May 15, 2007, for a certificate of convenience and necessity for a proposed transmission line in Collin County, Texas

Docket Style and Number: Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a 138-kV Double Circuit Transmission Line and Substation in Collin County, Texas. Docket Number 34276.

The Application: The project is designated the Craig Ranch Transmission and Substation Line Project. Brazos Electric stated that the proposed transmission line is needed to provide adequate service to the rapidly increasing residential and small commercial load in the area. The miles of right-of-way for this project will be approximately 2.0 miles (preferred route). The estimated date to energize facilities is January 2010.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is June 29, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34276.

TRD-200701885
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 15, 2007

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Notice of Application for Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 9, 2007, for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of WESTEX Telecom for Designation as an Eligible Telecommunications Provider (ETP). Docket Number 34281.

The Application: The company is requesting ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as an ETP for service areas set forth by the commission. WESTEX Telecom seeks ETP designation in the wire center of Big Spring, which is within the service area of AT&T Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by June 14, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 34281.

TRD-200701844
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 11, 2007

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Notice of Application for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 9, 2007, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of WESTEX Telecom for Designation as an Eligible Telecommunications Carrier (ETC). Docket Number 34279.

The Application: The company is requesting ETC designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as an ETC for service areas set forth by the commission. WESTEX Telecom seeks ETC designation in the wire center of Big Spring, which is within the service area of AT&T Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by June 14, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 34279.

TRD-200701843
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 11, 2007

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Notice of Application for Designation as Eligible Resale Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 10, 2007, for designation as an eligible resale telecommunications provider.

Project Title and Number: Application of dPi Teleconnect, LLC for Designation as an Eligible Resale Telecommunications Provider (Resale ETP). Docket Number 34286.

The Application: dPi Teleconnect, LLC provides services solely through the resale of an incumbent local exchange carrier's services. dPi Teleconnect, LLC currently offers Lifeline Services and assumes the obligation to offer Lifeline services to any customer in its certificated service area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by June 14, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 34286.

TRD-200701860
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 14, 2007

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 10, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Pelzer Communications Corporation for a Service Provider Certificate of Operating Authority, Docket Number 34283 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, frame relay, fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas currently served by all incumbent local exchange companies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 30, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34283.

TRD-200701861
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 14, 2007

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On May 8, 2007, Cap Rock Telcom filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60545. Applicant intends to relinquish its certificate.

The Application: Application of Cap Rock Telcom to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 34275.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 30, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34275.

TRD-200701842
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 11, 2007

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Public Notice of Workshop Regarding Project for Staff Study of Cost Models in Connection with P.U.C. Substantive Rule §26.403 Texas High Cost Universal Service Plan (THCUSP)

The staff of the Public Utility Commission of Texas (staff) will hold a workshop to gather information regarding cost models in connection with P.U.C. Substantive Rule §26.403 - Texas High Cost Universal Service Plan on Tuesday, June 19, 2007, at 9:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis

Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 34293 has been established for this proceeding.

P.U.C. Substantive Rule §26.403 states that, regarding calculating the forward-looking economic cost of service, the monthly cost per-line of providing the basic local telecommunications services and other services included in a benchmark shall be calculated using a forward-looking economic cost methodology. The purpose of this project is for the commission staff to gather information regarding such forward-looking economic cost methodologies.

By Thursday, May 31, 2007, all parties that want to propose a particular forward-looking cost model to be considered by the staff in this project and workshop must file, in this project, their intent to propose such a model and all legal documents they would propose be signed by parties interested in access to and/or use of their model. Parties also should include an explanation of what parts or aspects of their model call for legal protection and why they believe such protection is needed.

By Monday, June 4, 2007, parties that have filed by May 31st that they have a model they intend to have discussed and evaluated in this project must provide access to a usable version of such model to the commission staff. Models submitted should be fully functional and capable of being tested through adjustments to inputs and/or operating parameters. Public data or hypothetical data should be submitted in the models for purposes of the workshop. All algorithms and formulae used by the model to calculate costs should be open to inspection. If any algorithms or formulae are claimed to be proprietary, a statement identifying such algorithms and formulae should be submitted, along with an explanation of why these are considered proprietary.

Also, by Monday, June 4, 2007, all parties that want access to the models considered in this project must file notice of that intent in this project.

On or about Tuesday, June 5, 2007, staff will file in this project, instructions regarding distribution of, or access to, submitted models.

Requests should be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, at 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All filings should reference Project Number 34293.

The format of the workshop will be maximum half-hour presentations by each party with a cost model, followed by a question and answer period on each model.

The commission staff requests that persons planning to attend the workshop register by phone with Isabel Herrera, Communications Industry Oversight Division, at (512) 936-7205.

Questions concerning the workshop or this notice should be directed to Mark Bryant, Communications Industry Oversight Division, at (512) 936-7204.

TRD-200701897
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2007

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Texas Residential Construction Commission

Notice of Application for Designation as a "Texas Star Builder"

The Texas Residential Construction Commission (commission) adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The "Texas Star Builder" designation requires that a builder or remodeler demonstrate that its education, experience, and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2), the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Schultz Construction, 105 Elizabeth Drive, Horseshoe Bay, Texas 78657; TRCC builder registration certificate # 1829; and the registered agent is Joseph L. Schultz.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one (21) days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200701829
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: May 11, 2007

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Notice of Application for Designation as a "Texas Star Builder"

The commission adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us

Pursuant to 10 TAC §303.300(i)(2) the commission is required to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application for designation as a "Texas Star Builder" of:

Khalifa, Inc. doing business as Pyramid Homes, 5704 Churchill Drive, Tyler, TX 75703; TRCC builder registration certificate # 1475; and the registered agent is Anwar Khalifa.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200701862
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: May 15, 2007

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Notice of Request for Comment

Pursuant to Property Code §430.001 the Texas Residential Construction Commission adopted limited statutory warranties and building and performance standards. The section further required that the adopted warranty periods shall be one year for workmanship and materials; two years for plumbing, electrical, heating, and air-conditioning delivery systems; and 10 years for major structural components of the home. The Texas Residential Construction Commission (commission) has adopted the limited statutory warranties as required by Property Code §430.001, with the warranty periods as stated.

Furthermore, Property Code §430.006 states that the warranties adopted by the commission supersede all implied warranties. The only warranties that exist for residential construction are warranties created by chapter 430 or by other statutes expressly referring to residential construction or residential improvements, or any express, written warranty acknowledged by the homeowner and the builder.

Property Code §430.009 allows a builder to "elect to provide a warranty through a third-party warranty company approved by the commission." It further states that a transfer of liability under §430.009 is not effective unless the company providing the warranty agrees to perform the builder's warranty obligations that are covered by the warranty provided through the third-party warranty company; and actually pays for or corrects any construction defect covered by the warranty provided through the third-party warranty company.

The commission adopted 10 Texas Administrative Code §303.251, regarding the assumption of builder's warranty obligations by a third-party warranty company certified by the commission to implement Property Code §430.009. The commission's rule states that to effectively transfer a builder's liability under one of the warranties set forth in Chapter 304 of this title to an approved third-party warranty company, "the third-party warranty company must agree to fully assume, without reservation, a builder's warranty obligations created by the Act; and make full payment for or repair any construction defect determined in an action to be covered by those warranties."

Considering the above information, please consider and provide comment on the following questions. Please submit comments to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144 or by fax to (512) 475.2453. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Third-party warranties" in the subject line. Please submit your comments by June 8, 2007. Your comments may be utilized to develop commission rules or policies related to the assumption of a builder's obligations by a third-party warranty company.

Does Property Code §430.009 require a certified third-party warranty company to fully assume the warranty obligations for all three warranty periods subject to the extent of the builder's work? For example, may a builder of a new home, who is obligated for the one, two and ten year warranty periods, elect to transfer only his ten year warranty obligations to a third-party warranty company and retain his obligations for the one and two year warranty periods?

Do the separate warranty periods adopted by the commission created a single warranty obligation for up to ten years or separate warranty obligations for each period? Does the answer to this question depend upon whether the construction project includes work subject to each warranty period?

TRD-200701911
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: May 16, 2007

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Stephen F. Austin State University

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

PURPOSE: Stephen F. Austin State University is seeking consulting services to provide testing, adjusting, and balancing of the chilled water loops for Power Plant #1. The same service is to be performed for Power Plant #2 and the Village as phases 2 and 3 at a time to be mutually agreed. Service to be performed includes:

• Research and ascertain GPM requirement for each air handler coil and each building total GPM.

• Test and determine if main venture is measuring accurately for each building.

• Visual inspection to determine if provision exist to enter water stream on each air handler coil and verify ports are not plugged.

• Test and determine if chill water coil venturies are functional and measuring accurately.

• Verify control valves are functioning properly where they exist.

• Visual inspection to confirm balance valves are present and operational.

• When flow is found to be low, measure pressure drop across strainer and determine whether screen needs to be pulled and cleaned.

• Develop strategy as to how the system will be operated while adjusting and balancing is being performed.

• Generate report of deficiencies to be repaired by the University.

• After chilled water system is ready, test adjust and balance system, marking all valve positions and generating a report of all findings to the University.

SELECTION CRITERIA: Evaluation will be made by the Mechanical Maintenance Supervisor and the Director of the Physical Plant based on evidence of the applicant's knowledge and experience in performing the specified services and costs. Interested parties must submit proposal with the following information: NEBB certification, experience, qualifications, cost for services to be provided for the Power Plant 1 evaluation with subsequent systems to be negotiated later, the name, address and phone of the individual assigned to the account.

CONTRACT COST: The contract amount is not to exceed $50,000 total for the three phases.

DEADLINES AND CONTACT INFORMATION: Proposals must be received in the Office of the Director of Purchasing, P.O. Box 13030, 2124 Wilson Drive, Nacogdoches, TX 75962 by June 1, 2007. For further information contact Mitch Johnson, (936) 468-4421, johnsonms1@sfasu.edu.

TRD-200701797
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: May 9, 2007

♦ ♦ ♦

Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Trinity River Authority, 5300 South Collins Street, Arlington, Texas 76018, received April 18, 2007, application for financial assistance in the amount of $300,000,000 from the Clean Water State Revolving Fund.

Zapata County, 7th and Hidalgo, Zapata, Texas 78076, received March 13, 2007, application for financial assistance in the amount of $6,415,000 from the Clean Water State Revolving Fund - Disadvantaged Community Program.

Harris County Water Control and Improvement District No. 36, 903 Hollywood, Houston, Texas 77015, received March 30, 2007, application for financial assistance in the amount of $5,000,000 from the Drinking Water State Revolving Fund.

City of Commerce, 1119 Alamo Street, Commerce, Texas 75428, received December 1, 2006, application for financial assistance in the amount of $2,300,000 from the Drinking Water State Revolving Fund.

TRD-200701870
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: May 15, 2007

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).